Position Paper

Saskatchewan
Social Services

The Child and Family Services Act

Legislative Proposals

January 1985

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Executive Summary

Recently, the Department of Social Services has engaged in a review of services to children and families. Two discussion papers were published during 1983 dealing with child protection, adoption and foster care issues. They suggested major changes in both legislation and departmental policy.

In order to receive public input into proposals for change, The Honourable Gordon Dirks, Minister of Social Services, appointed an Advisory Council on Child Protection. The Council chaired by Dr. P. Matthews, held public meetings throughout the province in order to elicit critical comment and proposals with respect to policy and legislation. The findings and recommendations of the Council were presented to the Minister early in 1984.

In March of 1984, the Department began the process of reviewing The Family Services Act in light of the recommendations of the Advisory Council and those of departmental staff. The objective was to prepare drafting instructions for the legislative draftsmen reflecting those recommendations which the Department wished to establish in legislation.

In preparing this Position Paper, the Department attempted to address the major areas of concern as expressed in the recommendations of the Advisory Council, in the departmental working papers and during meetings with department staff. These areas have been highlighted in the following paragraphs to provide guidance in perusing the Position Paper which contains proposed wording for a new Child and Family Services Act.

The Inclusion of a Statement of Principles

The proposed legislation contains a preamble in the form of a Statement of Principles. These principles are intended to influence policy direction, statutory interpretation, and judicial and administrative decision-making.

The principles recognize that the paramount consideration under the Act is the best interest of the child while at the same time acknowledging that the best interests of a child generally rest within the context of the family. Other principles, as suggested, deal with issues of fundamental justice, service by agreement, stability and continuity of care, least restrictive appropriate alternative care and the recognition of cultural and emotional needs.

Preventive Services

The Position Paper addresses the concern regarding a lack of emphasis on preventive services in the following manner: Firstly, the Paper is structured in such a way as to highlight the emphasis on prevention. PART I - Voluntary Services to Families deals exclusively with those services designed to prevent children from coming into the care of the Minister as children in need of protection. Provisions are included to allow for direct payments to families to enable them to care for their children at home and for payments to individuals employed to assist families in caring for their children. Of major importance is the emphasis placed on provision of voluntary services through community based non-governmental organizations.

Where a parent is unable to provide care for a child at home, either due to serious disability or a temporary family crisis, the department would be able to assist by way of agreements for residential care. These agreements would recognize the parents' right to the custody of their children and would reserve for the Minister only that amount of authority necessary to provide day-to-day care. Provision is also made for voluntary agreements with 16 and 17 year olds in order to prevent them from becoming children in need of protection or to prevent them from coming into conflict with the law as young offenders.

The Adversarial Nature of Child Protection Proceedings

PART II of the Paper specifically addresses the issue of child protection.

A major thrust is the proposal for a legislative mandate to work with protection families by agreement as opposed to resorting to the adversarial arena of the Court. Agreements under this provision would be based on a recognition by the child's parent or caregiver that the child is in need of protection. Negotiations respecting agreements would normally involve a case conference and the parent or caregiver would be given the opportunity of seeking legal advice prior to commitment in writing. Where a negotiated agreement is not possible, the alternative of mediation by an impartial 3rd party mediator would be offered. A legislative mandate for the provision of mediation services is provided. Where all else fails, the matter would be then referred to the Court as a last resort.

With respect to court-related child protection procedures, a major emphasis has been placed on full disclosure. When a child has been apprehended as being in immediate jeopardy, the officer would be required as soon as possible to give the child's parent or caregiver full reasons for removal of the child and the date, time and place for a show cause hearing. In preparation for child protection hearings, the Minister would be required to fully disclose to the parent or caregiver the nature of the case that will be presented to the Court.

The option to proceed by way of agreement would be encouraged even in cases where the child has been apprehended as a child in immediate jeopardy. Where the parent or caregiver is prepared to enter into an agreement with the Minister for the care of the child, provision is made for the withdrawal of an application for a show cause hearing.

The Need to Expand the Definition of "Parent

The definition of "parent" is stated in the General Interpretation section of the Paper. The definition acknowledges that in certain cases a single father should be recognized as a parent for the purposes of this Act. The definition requires that he acknowledge his parentage in writing or provide for the child's support. The proposal would also define as a parent, a person who has assumed parental responsibilities for at least a 12 month period immediately prior to a proceeding. Thus, a common-law partner of the child's parent, a step-parent, or a single father could be considered a parent under the expanded provisions.

A major innovation proposed in the Position Paper is the concept of a person of sufficient interest. Although that person is not a parent under the proposal, upon successful application to the Court for such designation, that person can achieve party status and would therefore receive notice of hearing custody and access considerations. A foster parent, relative or a single father could be therefore designated as a person of sufficient interest.

The Duty to Report

The proposed legislation would require that anyone who suspects that a child may be in need of protection report his suspicion to the Department or to the police. The proposed section makes it clear that the presumption of professional confidentiality cannot override the duty to report, with the exception of solicitor-client relationships. Also, if a non-reporting professional is a member of a registered profession, that professional would be referred to the governing body of his profession for appropriate disciplinary action.

The Definition of "Child in Need of Protection"

A revised definition of "child in need of protection" and a definition of "immediate jeopardy" are proposed in the Paper. The definition of "child in need of protection" is much more specific than the present definition and would provide officers with more precise direction. As well, it would give parents fair warning of when intervention might occur. The proposed definition addresses physical abuse, sexual abuse and exploitation, failure or refusal to provide medical, surgical or remedial care or treatment, emotional abuse, child abandonment and offenders under the age of 12 years.

The present Act does not define the term "immediate jeopardy" in spite of the fact that it is the trigger to the most serious measure available under the Act - the removal of a child from his parents and placement in the care of the Minister prior to a hearing to determine that he is in need of protection. Read in conjunction with the definition of "child in need of protection", this new definition will provide clearer direction to officers in assessing whether removal of the child is necessary.

The effect of the proposed definition would be to limit removal of children from their parents or caregivers by providing reasonable guidelines for officers and police. The proposed definitions of physical abuse and emotional abuse are considered to be broad enough to cover alcohol and drug abuse by the child.

The Due Process Rights of Parents

The Position Paper endeavours to ensure that clients of the department and parties before the Court are treated fairly.

The Proposals introduce the concept of mediation in child protection matters. Where agreement between the Minister and the family is frustrated, an impartial third party may be introduced to mediate between the parties. Mediation has the potential of ensuring that bias or the appearance of bias will be eliminated in the process of developing protective care agreements.

A further protection for clients is the proposed requirement that they be advised of their right to seek independent advice prior to signing an agreement. There is a penalty provision for the use of pressure to get a parent or a child to sign an agreement.

In child protection proceedings, the proposed introduction of the show cause hearing protects parents from interference with respect to the custody of their children without an early court review. At the show cause hearing the judge will also determine if reasonable and probable grounds existed for the removal of the child. As well, the proposed notice provisions respecting the show cause hearing will require that the officer give full reasons to the parents for the apprehension.

The Length of the Court Process

Major changes have been proposed in the Paper which would encourage speedy resolution of child welfare disputes.

Where a child is removed from his home as being in immediate jeopardy the department would be required to bring the matter before the Court for a show causing hearing within seven days. The officer must demonstrate that reasonable and probable grounds existed for the removal of the child. If he cannot, the child would be returned home.

Where it is determined that grounds existed for apprehension, the Court would be required to set a date for a protection hearing within 45 days of the child's removal from his home. With respect to child protection hearings generally, it will be required that proceedings would be concluded within 90 days from the date of the application for a show cause hearing. Adjournments would be limited to 30 days unless the Court gives written reasons for a longer adjournment.

Also, in the case of Court orders, the Court would be required to give full reasons for its findings and orders thus giving full information to the parties if they wish to appeal.

The Inclusion of 16 and 17 Year Olds under the Act

The General Interpretation section defines a "child" as any person actually or apparently under the age of 18, and "young persons" as children of at least 16 but under 18. Thus, the proposed legislation would effectively include services to this age group. A young person could therefore be the subject of a residential service agreement, a family services agreement, a protective care order, or an agreement for the provision of financial assistance or residential care to the young person in his own right.

For the most part, a young person would be considered as being part of a family unit and services would be provided in that context. However, in circumstances where the family was clearly uninvolved or chose not to have an involvement and there were no protection concerns, the Minister would have the option of entering into an agreement with the young person in his own right. The provision of any such services would be contingent upon the young person taking part in educational, vocational, pre-vocational or counselling programs.

The Inclusion of the Child in the Formulation of Plans

With respect to residential services agreements, the proposed legislation would require that the Minister obtain the wishes and views of the older child (12 years).

PART I includes provisions for entering into agreements with 16 and 17 year olds in their own right under limited circumstances.

In the case of child protection any child of at least 12 years of age would automatically be a party to the proceedings, and a child under twelve could be a party if ordered by the Court. As a party, the child would be required to be given notice and would be entitled to legal representation. In the case of a child under age 12 who is not a party, the Court could order that he be brought forward to state his views. With respect to Court orders, the proposal is that if the child is at least 12 years of age, his views would be taken into consideration before placement with a relative or other person of sufficient interest.

Protective Intervention

The concept of protective intervention orders is proposed under the child protection provisions in Part II. Where a parent is alleged to have physically or sexually abused his child, application could be made to the Court to have that parent refrain from contact with the child, rather than penalizing the child by removing him to a strange environment. The onus would be on the officer to establish that the alleged perpetrator is a source of danger to the child's security or development.

The Need to Legislate Access Rights to Children in Care

In residential service agreements the proposal is that legal custody remain with the parent. As such, the parent is guaranteed reasonable access to the child. If dissatisfied, the parent would be able to negotiate with the Department and if still not satisfied, the option of terminating the agreement would be available.

In the case of a show cause hearing, if the Court were to order that the child remain in the Minister's care pending a protection hearing, it would be able to order access in favor of the parent for that period of time. With respect to child protection hearings, the same provision would apply during adjournments. The Court would have discretion to make an interim access order in favor of a parent or a person of sufficient interest in instances where there is no existing Infants Act or Divorce Act order. Similarly, where the child is found to be in need of protection, the Court would be able to order access in favor of a parent or person of sufficient interest.

Indian Child Welfare

The proposed definition of "best interests of the child" and the principle emphasizing the recognition of cultural differences are seen as positively influencing services provided to Indian and Metis children.

The proposed definitions of "child in need of protection" and "immediate jeopardy" are seen as less culturally biased and would ensure that decisions are objective and based on observable evidence. With respect to Treaty Indians, the proposed legislation would require that the Chief of the Band to which a child belonged, be given notice of a child protection hearing. This could provide a formal mechanism for the Band to present the Minister with alternatives to court proceedings. The concept of a person of sufficient interest, as proposed, would enable native persons to apply to the Court for party status and perhaps be entitled to custody of or access to the child thus maintaining and encouraging contact with his cultural group.

With respect to adoption, proposals for De Facto Adoption recognize existing practice and custom whereby children are placed with relatives or family friends on the understanding that they be raised as children of those families.

In terms of the future, the proposals allow for the delegation of Ministerial Authority to organizations or associations. Thus, the possibility could exist for the development of Indian Children's Aid Societies or Indian Family Services Bureaus.

Foster Parent Concerns

The proposal with respect to the concept of a person of sufficient interest would allow a foster parent to apply to the Court for party status. If successful, the possibility would exist for the Court to make either a custody or access order in favor of a foster parent.

The provisions respecting subsidized adoption are expanded to include adoption by foster parents who wish to adopt children in their care if the adoption would place an undue burden on the financial resources of the adopting parent.

With respect to child care practices, the proposed legislation provides protection to foster parents for acts done in good faith.

Proper Administrative Review

The proposal for the inclusion of the Family Services Review Board under this Act, will ensure that clients affected by administrative decisions of departmental officials will have a fair hearing. The Board would be advisory in nature and its findings and recommendations would carry significant weight. Its positions would be filled by people knowledgeable in the programs and services of the department and its procedures would be consistent with the principle of fundamental justice.

Commission of Inquiry

Provisions for a commission of inquiry where the child dies of unnatural causes while in the care of the Minister have not been included in the proposed Family Services legislation. These provisions currently exist under The Coroner's Act which is administered by the Department of Justice.

THE CHILD AND FAMILY SERVICES ACT

LEGISLATIVE PROPOSALS

Statement of Principles

The report of the Minister's Advisory Council on Child Protection recommended that new family services legislation contain a statement of principles to provide the overall context for the Act. After reviewing other provincial Acts, the recommendations of the Advisory Council and the discussion papers produced by the Department, it is felt that the following principles are consistent with the general philosophy and intent of the proposed Child and Family Services Act.

- in all matters under this Act, the best interests, protection and well-being of children must be ensured.

- while parents may need assistance in caring for their children, the assistance should, whenever possible, support the family unit and be provided on a voluntary basis.

- the children's services system should be designed to meet a child's need for a continuous, stable environment and to promote the child's opportunity to enjoy a parent-child relationship and to be a wanted and needed member of a family.

- where there are appropriate alternative methods of assisting a child or family, the least restrictive or disruptive alternative which is appropriate in the circumstances should be used.

- children and their parents should have an opportunity to be heard before decisions affecting their interests are made and when they have concerns about services being provided to them.

- clear criteria and procedural safeguards are required for decisions which affect the interests and rights of children and their parents.

- services to children and families should, when appropriate, be based on a recognition of emotional and cultural needs of the child.

Interpretation

The proposed format of new legislation allows for an interpretation section in each Part containing definitions pertinent to that particular Part. The general interpretation section therefore includes only those definitions that refer to matters throughout the Act. The definitions in the current Family Services Act were reviewed and updated in light of current provincial legislation, the general directions outlined in the Principles and concerns raised during the hearings of the Minister's Advisory Council on Child Protection. Definitions of "family" and "maternity home" were deleted as they were not considered necessary in light of other definitions. In addition, definitions of "foster home", "group home" and "institution" were deleted and replaced with a more general definition - "residential service" and a definition of "place of safety" was placed in Part II of the Act. References to "juvenile delinquent" have been removed due to the new Young Offenders Act. New definitions include "family services", "best interests of the child" and "person of sufficient interest" while the definitions of "parent" and "child" have been changed sustantially as a result of public input.

Rationale/Intent	Current Act	Proposed Wording ii
1 Name of Act expanded to reflect the emphasis on the child.		1 This Act may be cited as <u>The Child and Family Services Act</u>.
2 Interpretation	**Interpretation**	**Interpretation**
(a) "child" - The age of the child is extended to eighteen to ensure the availability of a full range of child welfare services to parents and adolescents under the age of eighteen.	"child" means a boy or girl actually or apparently under the age of sixteen years.	2(1) In this Act: (a) "Child" means a person under the age of eighteen years;
(b) "court" - A definition should be included to identify what court has jurisdiction over child welfare matters.	No current provision	(b) "court" means the Provincial Court of Saskatchewan or the Unified Family Court;
(c) "daycare" - Since the day care operating mandate is currently contained in the provisions of <u>The Family Services Act</u> and there are no immediate intentions to change this, it is proposed that day care be defined within the context of a service to provide some consistency with the overall direction of the Act in the provision of family services. In addition, the link to regulations should be much clearer than in the current Act which includes day care under the provisions regulating institutions.	"day care centre" means a building or part of a building operated for the purpose of providing, at the request of parents, care for four or more children who do not reside on the premises and the provision of the care is not within the jurisdiction of any other department or agency of the Government of Saskatchewan.	(c) "day care" means the provision of care to a child apart from his parents in a place required to be licensed for the purpose and for such periods of time and under such conditions as may be prescribed by the Lieutenant Governor in Council;
(d) "department" - No change from the existing provisions.	"department" means the Department of Social Services.	(d) "department" means the Department of Social Services;
(e) "director" - This definition is not consistent with the department's present organizational structure nor with the <u>Young Offenders Act</u>. What is required is a more general definition that will not be affected by reorganizations or changes in other legislation. A Minister's Order will still be required to designate the individual or individuals by name.	director means: i) the Regional Director in the Department; ii) the Superintendent as defined in the Juvenile Delinquents Act (Canada); or iii) such other person or persons as the minister may designate.	(e) "director" means a person appointed by the minister as a director for all or any purposes of the Act;

Rationale/Intent	Current Act	Proposed Wording
(f) "family services" - This definition is intended to encompass the broad range of services provided through the Department that may be available to children and their families to address situations where children may be at risk developmentally or socially or are considered to be in need of protection. It includes both residential and non-residential support services.	No current provision.	(f) "family services" means residential or non-residential services provided for children and their families including mediation services, prevention programs, in-home support services, individual and family counselling and services to children with developmental, mental or physical disabilities;
(g) "minister" - means the Minister of Social Services.	"minister" - No change from current Family Services Act.	(g) "minister" means the Minister of Social Services;
(h) "officer" - No change from current Family Services Act.	"officer" means a person appointed by the Minister to enforce this Act.	(h) "officer" means a person appointed by the minister to enforce this Act;
(i) "parent" - The current definition of parent is very restrictive. As a result it does not afford adequate protection to those who may have formed a caring relationship with the child. Excluded from the current definition of a parent are the single father of a child born to an unmarried woman and any individual who has a parental relationship to the child and has cared for or supported the child. It is therefore recommended that the definition of parent be expanded to include the father where the father is not married to the mother but has an established relationship with the child. It should also include those situations where an individual is not married to the natural parent but has had an established relationship with the child for 12 months prior to any intervention by the Department or where a person has de facto custody of the child. As well, an individual who has either acknowledged parentage in writing or has provided support payments for the child should be considered as a parent.	"parent" means: i) the father and the mother of the child if both are living or the survivor if one of them is deceased ii) the mother only, where at the date of the birth and her child she was unmarried and did not subsequently legitimize the child through marriage. iii) the guardian of the child, if the father and the mother are both deceased, or if there is no legal guardian, the person who has, or who at the material time, had actual custody of the child; or iv) the mother only, where a child is born to a married woman and it has been established that her husband is not the father of the child.	(i) "parent" when used in reference to the child means: (i) the father and mother of the child where both are living or the survivor if one of them is deceased; (ii) the mother of a child where at the date of the birth of her child she was unmarried and did not subsequently legitimize the child through marriage; (iii) the mother only, where a child is born to a married woman and it has been established that her husband is not the father of the child; (iv) the individual who during the twelve months before intervention under this Act has demonstrated a settled intention to treat the child as a member of his or her family, or has acknowledged the parentage of

Rationale/Intent	Current Act	Proposed Wording
		the child in writing or has provided for the child's support; (v) the legal custodian of a child or the person with de facto custody of the child;
(j) "person of sufficient interest" Where a person other than a parent has had a significant relationship with a child who is the subject of court proceedings, that person should have the right to seek party status. The Court should determine whether a relationship is significant before granting party status.	No current provision	(j) "person of sufficient interest" means a person who has obtained an order pursuant to section 3;
(k) "placed for adoption" This definition is not included in the current Family Services legislation. It is needed to clarify the time at which a child is placed for adoption.	No current provision.	(k) "placed for adoption" means that a child has been placed by the director in the home of a person approved by him for the purpose of adoption;
(l) "protection hearing" A definition of protection hearing is necessary for ease of reference and consistency within Part II of the Act.	No current provision.	(l) "protection hearing" means a hearing held pursuant to subsection 21(1);
(m) "residential service" It is proposed to delete definitions of foster home, group home and institution as the distinction on the basis of the nature of the service is not clear. A definition of residential service is intended to replace these other definitions and more generally encompass most forms of care provided to the child outside the parental home.	No current provision.	(m) "residential service" means care provided to a child in a foster home, group home, institution, room and board situation or other facility or placement as approved by the minister;
(n) "show cause hearing" The show cause mechanism is new to the Act. It has as its intent the establishment of whether the child who has been admitted to the custody of the minister as a child in immediate jeopardy ought to remain in the care of the minister pending the full	No definition.	(n) "show cause hearing" means a hearing held pursuant to section 19.

Rationale/Intent	Current Act	Proposed Wording
hearing of the matter. This hearing would focus on the safety of the home and begin to address plans the parent may have for the child in the context of the reasons for the admission into care. (o) "young person" - Because of the extension of the age of a child to 18, some services will have to be directed towards emancipated children. These are children who do not have parents, who are experiencing serious conflicts with their parents, or whose parents wish no responsibility for them. It was felt that an age restriction should be placed on when a child would be eligible to be considered for these services. Consequently, the ages of 16 and 17 are recommended. Prior to 16 the child is unable to work full-time or leave school without parental involvement and the family still should have some form of a decision-making role in the actions of the child.	No current provision.	(o) "young person" means a child who is at least 16 but under 18 years of age.
(2) "Best interests of the child" - This phrase was used in the current Act without definition and is being used extensively throughout the proposed Act in relation to service provision. It is intended that this definition would act as a guide for officers, directors and judges in making decisions effecting children. Similar definitions of "best interests of the child" are contained in the current child welfare legislation of New Brunswick, Manitoba and Ontario and are referred to as rights in the Youth Protection Act of Quebec.	No current provision	(2) "Best interests of the child" - Where the court must make an order in the best interests of the child, it shall take into account: (a) the quality of the relationship that the child has with the person to whom custody or access may be entrusted; (b) the personality and character of the child and his emotional and cultural needs; (c) the home environment proposed to be provided for the child including the physical and psychological needs of the child; (d) the plans the person to whom custody may be entrusted has for the future of the child;

Rationale/Intent	Current Act	Proposed Wording
		(e) the wishes of the child to the extent that the court considers appropriate, having regard to the age and maturity of the child; (f) the importance of continuity in a child's care; (g) the effects on the child of a delay in the disposition of the case.
2.3 Person of sufficient interest As noted in 2(1)(j) above, there is need to include certain individuals having a significant relationship with the child as parties to the proceedings. A section is required to empower the court to designate such persons as parties. As a party, a person would receive notice of any court proceedings and be entitled to make representations to the court with respect to the child.	No current provision.	3 The court may, on application, designate a relative of a child or any person who has had a significant relationship with a child as a "person of sufficient interest" for the purposes of this Act.

Part I - Voluntary Services to Families

This Part is designed to enable the provision of family services as a preventive measure to families and their children. Children of these families may be at risk of being in need of protection in the future or they are children who are developmentally disabled and may require special assistance.

The identification of preventive services as a special part is consistent with the department's desire to shift emphasis from providing services at the point when the child is removed from the home to one where support is provided to prevent the removal from occurring. It is based on the philosophy that the family is the best setting for the child.

This Part provides the enabling legislation for the Minister to establish and fund various family services either through the department or through non-government organizations. Where possible, these services would be community based and provided as in-home support.

It will also allow for the family to enter into a voluntary agreement with the department to provide a residential service. This agreement will be limited to a term of 24 months in total and is designed to deal with situations of a short term nature or to assist a family with a developmentally disabled child.

Finally, provisions are included to enable a youth of 16 or 17 years of age to enter into an agreement with the department to obtain services or financial assistance without parental consent where the youth has no parents or where the youth is living apart from his parents because of family conflict or the parents refusal to assume responsibility for the youth. These services would be contingent upon the youth agreeing to participate in an appropriate educational, counselling or training program.

It should be noted that an increased emphasis on the use of family services as a preventive measure will have significant budgetary implications for the Department. However, in the long term these costs should be offset by a reduced number of children coming into care as children in need of protection.

Rationale/Intent	Current Act	Proposed Wording
S.4 Family Services **40(1) A clause enabling the provision of family services by the department is required. This clause is similar to Section 6 in the current Act.**	6 The minister may, in order to enable a parent to maintain a child in his home and in order to prevent the child from becoming a child in need of protection, assist the parent by providing such welfare services as the minister considered necessary and advisable. 1973, c.38, s.6.	4(1) Subject to this Act and the regulations, the minister may establish, operate and maintain family services.
(2) A clause enabling the Minister to make direct payments to families to provide for care for a child is required. This clause is similar to Section 7 of the current Act and is used primarily by the Rehabilitation Services Division for providing financial assistance to families for services for special needs children.	7 The minister may make such payments as he considers necessary to or for the benefit of a parent, child or other person where special services or moneys are considered by the minister essential to enable the parent to care for the child. 1973, c.38, s.7.	(2) In accordance with the regulations, the minister may provide family services or pay for family services to or for the benefit of a parent or a child where he considers them essential to enable the parent to care for the child.
S.5 and S.6 Funding **Clauses are necessary to enable the Minister to provide funds for the establishment, operation and maintenance of family services and also to provide grants for the research and development of new family services. The terms and conditions for the provision of such financial assistance will be prescribed by regulations. These sections are consistent with the standard departmental sections found in such acts as The Department of Finance Act.**	5(1) Subject to the approval of the Lieutenant Governor in Council, the minister may do such things as he considers advisable to promote the growth and development of community services and resources designed to support families in the proper care of their children and to prevent circumstances that lead to family breakdown. (2) Without limiting the generality of subsection (1), the minister may, subject to the approval of the Lieutenant Governor in council, where the minister considers it advisable: (a) provide consultative services to assist in the co-ordination of existing community and other services and in the development of new family services;	5 The minister may, for any purpose related to family services, provide financial assistance for the establishment, operation and maintenance of family services, on any terms or conditions that are prescribed by the regulations, to any person, agency, organization, association, institution or other body within or outside Saskatchewan. 6 The minister may, for any purpose relating to the administration of this Act, enter into agreements with or make grants to, on any terms or conditions that he may prescribe, any person, agency, organization, association, institution or other body within or outside Saskatchewan and without restricting the generality of the foregoing, may provide financial assistance for the purpose of:

Rationale/Intent	Current Act	Proposed Wording
	(b) provide funds by way of loans, grants or otherwise to assist in the research, development and maintenance of new community services and in the expansion and improvement of existing services; (c) conduct research with a view to ascertaining more effective methods of providing community and other services aimed at promoting, supporting and maintaining family life or carrying out the purposes of this Act. 1973, c.38, s.5.	(a) assisting in the co-ordination of existing family services and in the development of new family services; (b) assisting in the research, development and maintenance of new family services and the expansion and improvement of existing family services; (c) conducting research with a view to ascertaining more effective methods of providing family services aimed at supporting and maintaining family life.
S.7 Agreements for Residential Services The ability to enter into an agreement with a parent to provide residential services is necessary for those circumstances that are of a temporary nature or that address the special needs of a developmentally disabled child. In neither instance is the child in need of protection but there is some risk of the situation growing more serious if a residential service is not made available at that time.	S.8 Any parent: (a) who through special circumstances of a temporary nature is unable to make adequate provision for his child; or (b) who is unable to provide the services required by his child because of the special needs of the child; may enter into an agreement with the minister to have the child placed under the care, custody or supervision of the minister for the purpose of providing the services or care required to meet the special needs of the child.	7(1) Any parent who: (a) through special circumstances is unable to care for his child; or (b) is unable to provide the services required by his child because of the special needs of the child; may enter into an agreement with the minister for the purpose of providing residential services for the child.
It is important to ensure that agreements of this sort are voluntary. If someone uses coercion in getting a parent to enter an agreement he should be subject to a penalty.	No current provision.	(2) Any person who uses undue influence on another person in order to secure his signature to an agreement under this section is guilty of an offence.
S.8(1) Term of the Agreement The term of the agreement should be reviewed periodically. A provision limiting the length of the agreement to one year should be included. This time frame is consistent with S.10(1) of the Family Services Act.	10.(1) The term of an agreement under S.8 or the provision of services or assistance under S.9 shall not exceed one year but any such agreement or provision may be renewed from time to time.	8(1) Subject to subsection (3), no agreement made pursuant to section 7 shall be effective for a term exceeding one year.

Rationale/Intent	Current Act	Proposed Wording 4
S.8(2) Extension of the Agreement There should be provisions for the extension of the agreement once the circumstances have been reviewed with the family but it is necessary for a cumulative total to be established. A cumulative total of 24 months is recommended as it is felt that any short term "preventive" situation should be resolved within that period of time. If it is not, the case should be reviewed to determine if the situation is more serious than originally identified. The ability to renew beyond the twenty-four months is included to accommodate a situation where it is considered in the best interests of the child to have a further renewal. An example of this would be a developmentally disabled child who is responding well to the care, but requires more than 24 months of the service.	S.10(1) (see above).	(2) An agreement made pursuant to section 7 may be extended or a new agreement entered into, however, the cumulative term of any agreements or renewals of agreements entered into pursuant to section 7 shall not exceed 24 months, unless the director determines that it is in the best interests of the child to renew or enter into a new agreement pursuant to section 7.
S.8(3) Age Limit - A clause similar to Section 18(2) and S.44(4) should be included to provide that agreements not extend beyond the eighteenth birthday. However the ability of the Minister to continue to assist a young person past eighteen to twenty-one should be established to allow the person to complete their education. This clause is necessary primarily to accommodate particular services to 16 and 17 year olds.	S.10(2) Notwithstanding Subsection (1), no agreement or provision for services or assistance shall extend beyond the 18th birthday of the person in respect of whom the services or assistance was given. S.44(4) Subject to subsection 5, the Minister may continue to provide support, shelter and care to a person who was previously committed to his care and who has attained the age of eighteen years where the support, shelter and care of the minister is necessary to allow the person to continue his education.	(3) An agreement entered into pursuant to section 7 expires when a person in respect of whom it was made obtains the age of 18 years, unless the minister agrees to continue the agreement to assist that person to complete a program of studies, but in no case shall the agreement extend beyond the date the person attains the age of 21 years.

Rationale/Intent	Current Act	Proposed Wording
2.9 Involvement of the child Provisions to allow a child over 12 to be consulted in the establishment of an agreement should be included. This permits the child to have some involvement in determining the most appropriate services to resolve the problems that have been identified by the family. The age of 12 is consistent with the age of consent to adoption and the age at which separate notice of hearing is served on the child.	No current provisions.	9 Where a child is 12 years of age or older, his wishes and views with respect to a proposed agreement pursuant to section 7 shall be determined.
2.10(1) Services to young persons Services to 16 and 17 year olds are included as a separate item as a youth at this age may not be part of a family or the family plays only a minor and peripheral role in their lives. These services should include family services as well as financial assistance. This age group is presently being dealt with under the Saskatchewan Assistance Plan but it is felt that they require a wider range of services. The circumstances under which these services would be available must be detailed as it is preferable that services to this age group be applied with the consent and participation of the family members. These circumstances would include where the young person has no living parent or guardian; the parent or guardian refuses responsibility for the young person, the young person has left home and the parent or guardian cannot provide the necessary supervision and the parents feel the situation cannot be resolved within the context of the family.	9 Where it appears to the minister that: (a) there is no parent willing to assume the responsibility for a person who is over the age of sixteen years and under the age of eighteen years; and (b) the person cannot be re-established with his family and is in need of care or supervision; the minister may provide to the person such services or assistance as the minister considers advisable. 1973, c.38, s.9.	10(1) The minister may enter into an agreement to provide financial assistance or residential care to a young person where: (a) the young person has no living mother or father; (b) the mother or father of a young person refuses to take responsibility for the young person and the young person is at risk of coming into care as a child in need of protection; or (c) the young person has a living mother or father but: (i) both mother and father acknowledge that they cannot provide the necessary supervision or control of the young person; and (ii) the young person has left home and is likely to come into care as a child in need of protection if that assistance or care is not provided.

Rationale/Intent	Current Act	Proposed Wording
(2) Conditions of Financial Assistance Where financial assistance is provided, that assistance should be contingent upon the young person participating in some form of educational, training or counselling program.	No current provision	(2) An agreement pursuant to subsection (1) is conditional on participation by the young person in any educational, training, rehabilitation or counselling program that the minister considers to be appropriate to the young person's abilities and consistent with his development as a responsible, independent person.
(3) Independent Advice The agreement may be signed by the young person without parental consent in the circumstances identified previously but the young person should be given the opportunity to seek advice from someone such as an adult friend or relative prior to signing.	No current provision.	(3) The director shall advise the young person of his right to seek independent advice prior to the signing of an agreement under subsection (1).
(4) Anyone who uses undue influence in getting a young person to sign an agreement should be subject to penalty under the Act.	No current provision.	(4) Any person who uses undue influence on a young person in order to secure an agreement is guilty of an offence.

Part II - Child Protection

Throughout the departmental report entitled, Review Of The Family Services Act, Part I, Child Protection Issues and Proposals, a major area of consideration focussed on the adversarial nature of child protection proceedings. Specific concerns related to:

- the circumstances surrounding an apprehension,
- the length of the court process,
- the amount of time a child could spend in care prior to a final decision on the case,
- the lack of opportunity for people who were not parents but had developed a relationship with the child to participate,
- the lack of information provided by the department to the parents after an appehension which fostered an adversarial position, and
- the lack of opportunity for resolution of protection situations by agreement.

These concerns were in turn echoed by the Minister's Advisory Council on Child Protection as a result of their hearings in late 1983.

This Part deals with the area of child protection and attempts to address these concerns in a legislative context to more clearly define the circumstances in which a child is believed to be in need of protection and what constitutes "immediate jeopardy" for the purposes of apprehension of children.

It also includes provisions governing the duty to report, the investigation of a report by an officer of the department, the concept of mediation, the show cause hearing, and the formal court hearing process.

Consistent with the principles of minimal intervention and working by agreement, opportunities are identified throughout this Part for dismissal of formal proceedings if the family and the department are able to reach an agreement on a plan for the family. In addition, the use of mediation to resolve issues of contention prior to court proceedings has been incorporated to reduce contention over issues and to facilitate voluntary agreements.

The concept of a show cause hearing within 7 days of the removal has been included as a means of resolving as quickly as possible the issue of placement of the child.

Statutory time frames are established throughout the hearing and appeal proceedings in order to finalize what plan will be instituted for the child and his family and avoid long periods of uncertainty for the child and his family.

Provisions with respect to notice of hearing have been expanded to provide more information to the parent as to the reasons for the apprehension of the child and also to permit persons of sufficient interest to participate in the proceedings if the Court so orders.

Finally the powers of the Court have been expanded with respect to its discretion regarding custody and access to the child in need of protection and its ability to attach conditions that it feels are in the best interest of the child.

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S.11 Interpretation **(a) "emotional abuse" - definition of emotional abuse is necessary in order to give care givers, officers, and the courts a clear statement of what threshold must be crossed in order for emotional abuse to be present.**	No current provision.	**11. Interpretation** (a) "emotional abuse" means substantial and observable impairment of a child's mental or emotional functioning as evidenced by a mental or behavioural disorder, including anxiety, depression, withdrawal, agression, or delayed development.
(b) "in immediate jeopardy" - The existing Act does not define immediate jeopardy which therefore allows unreasonably broad discretion. Given the more specific wording for the definition of child in need of protection, a definition of immediate jeopardy should be briefly stated and impart the sense that the only way the child can be protected is by removing him from the custody of the parent. **The term is operationalized within the proposed provisions of Section 14 where the officer is required to undertake a careful assessment of whether the child is in need of protection and whether the child can safely be cared for in his own home.**	No current provision.	(b) "in immediate jeopardy" means a child's life or health is seriously or imminently endangered.
(c) "place of safety" - This definition is retained but with updated terminology, adjustment for readability and a clear statement that it is a director's decision as to the designation of places of safety other than foster homes or hospitals.	2(n) "place of safety" includes a correctional institution for boys or girls, a shelter or temporary home established by the department or a municipality, an institution established for the care and protection of children and any other place designated as a place of safety by the director, any social worker or officer but does not include a jail, prison, police station, lock-up or guardroom unless used temporarily and in an emergency. 1973, c.38, s.2.	(c) "place of safety" includes a foster home, a hospital, and a place or one of a class of places designated as such in writing by a director.

Rationale/Intent	Current Act	Proposed Wording
(d) "protective care" - Because of the emphasis on working by agreement with the parents to resolve the identified risks to the child, a definition is required to cover the provision of family services where a child has been found to be in need of protection by a judge who has then ordered the provision of specific family services in the home or as a residential service.	No current provision.	(d) "protective care" means family services provided as a result of a court order.
2.12 "child in need of protection" - In 1973, when The Family Services Act replaced The Child Welfare Act, substantial improvements were made in defining "child in need of protection". Some of the more ambiguous and questionable descriptive categories were dropped from the legislation, while others were merely condensed in form, using shorter sentences to convey the substance of the provisions without a corresponding increase in specificity and clarity. One of the criticisms of the use of words like "unfit" and "improper" in Section 15 of The Family Services Act is that they are open to a wide range of interpretation which could vary between communities and cultures. The meaning could also vary within a particular community or culture as well. Therefore, the current definition fails to give parents fair warning when intervention may occur and fails to give adequate guidance to officers and the court in their attempts to protect children. The failure to state specific harms from which children are to be protected, in combination with the vague and broad wording allows cultural differences and value judgements to cloud	15 A child is in need of protection when: (a) he is without proper or competent supervision; (b) he is living in circumstances that are unfit or improper for him; (c) he is in the custody of a person who is unable or unwilling to exercise proper control over the child; (d) his life, health or emotional welfare is endangered by the conduct of the person who has custody of the child; (e) the person in whose custody he is neglects or refuses to provide or obtain proper medical, surgical or other recognized remedial care or treatment necessary for his health or well-being or normal development, or refuses to permit such care or treatment to be supplied to the child when it is considered essential by a duly qualified medical practitioner; (f) his parent is unfit, unable or unwilling to care for him. 1973, c.38, s.15.	12 A child is in need of protection where: (a) the child has been or there is a reasonable risk that the child will be physically abused or exposed by a person having care of the child to circumstances resulting in physical abuse. (b) the child has been or there is a reasonable risk that the child will be sexually abused and/or sexually exploited by a person having care of the child or exposed to circumstances resulting in sexual abuse and/or sexual exploitation. (c) the child has been or there is reasonable risk that the child will be emotionally abused by a person having care of the child or exposed to circumstances resulting in emotional abuse. (d) the child requires medical, surgical or other recognized and remedial care or treatment necessary for his physical or mental health or well-being or normal development and the person having care of the child neglects or refuses to permit such treatment when it is considered essential by a duly qualified health professional;

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decision-making, and increase the risk of unnecessary intervention into a family. It is critical that the definition cover six areas: - physical neglect - physical abuse - emotional abuse or neglect - sexual abuse - parent/child conflict - child offender under 12 years (due to the fact the Young Offenders Act does not cover this group) A new definition should be focussed in the direction of harm to the child rather than parental behavior or conditions in the home. It should be specific in its wording while allowing the identification of children who are assessed as being at risk of harm unless intervention occurs. The suggested wording attempts to be much more specific than S.15 but remains broad enough to allow officers to exercise reasonable discretion. **S.12 Duty to Report** An expansion of Section 16 of the current Act regarding duty to report is required in light of the departmental discussion paper (Review of The Family Services Act, Part I, pp. 50-53). The legal duty of individuals to report must be more clearly addressed. (1) A statement is required that more fairly reflects the individual's duty to report that a child may be in need of protection. The existing provision appears to say the individual must have concluded the child is in need of protection.		(e) the child has been abandoned or the child's parents have died or are unavailable, unwilling or unable to exercise the custodial responsibilities toward the child and no adult is caring for the child; (f) the child is under the age of 12 and has been involved in the commission of a criminal offence.
	16(1) Every person having information that a child is in need of protection shall report the information to an officer or peace officer.	13(1) Subject to subsection (2), any person who has information that leads him to believe that a child may be in need of protection, whether or not the information was obtained in confidence, shall report the circumstances to an officer or peace officer.

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The welfare of the child must remain the paramount consideration. Therefore the subsection must clearly detail that the duty to report overrides the professional's responsibility of confidentiality.		
(2) However, a lawyer acting within a solicitor-client relationship must be exempted to resolve a conflict that would seriously impair that lawyer's ability to represent his client.	No current provision.	(2) Subsection (1) does not apply in the case of a solicitor who has obtained information in a solicitor-client relationship.
(3) The professional's special responsibility toward the child must be clearly established. The professional has a higher duty to report than the other individuals because professionals are more knowledgeable or informed about issues of abuse and neglect and the general needs of children.	No current provision.	(3) If a person fails to report in accordance with subsection (1), the director may advise the appropriate governing body of that person's profession or occupation, if any, that the person has failed to comply with subsection (1).
(4) The obligation of a peace officer to report should remain unchanged.	16(3) Every peace officer who is in receipt of information that a child is in need of protection shall forthwith report the information to an officer of the department.	(4) Every peace officer who is in receipt of information that a child may be in need of protection shall forthwith report the information to an officer.
S.14 Investigation (1) New provisions are necessary to spell out the various outcomes of investigations, direct activity based upon those outcomes and incorporate existing provisions from various sections in the existing Act as noted. Currently, S.16(4) does not highlight the requirement that complaints be investigated. The wording of the subsection is unclear and must be amended to reflect reliance on the definition of "child in need of protection". In the proposed Section 14, the concept of risk to the child replaces wording that cites neglect, abuse, exploitation or cruel treatment."	16(4) The department shall investigate reports or complaints of neglect, abuse, exploitation or cruel treatment of a child and provide such services to any person as may be necessary to reduce or eliminate any neglect, abuse, exploitation or cruel treatment found to exist. 1973, c.38, s.16.	14(1) An officer shall investigate a report that a child may be in need of protection.

Rationale/Intent	Current Act	Proposed Wording
(2)&(3) The critical thrust, as outlined in the Review of The Family Services Act, Part I: Child Protection Issues and Proposals (pp.6-19), is the mandated application of family services as the first line of response to any case of a child being in need of protection. Joined to this mandate is the need for provisions that will allow work with parents by agreement wherever possible instead of resorting to the adversarial arena of the court. Two new provisions are required to enable this approach.	No current provision.	(2) Where an officer on reasonable and probable grounds believes that a child is in need of protection, he shall inform the parent of available family services and offer such services to the parent. (3) Where a parent agrees that the child is in need of protection, the minister may enter into an agreement for the provision of family services.
(4) Restating the existing Section 18 but with the addition of a provision that an agreement has been attempted prior to taking the matter to court are required.	18 Where an officer has reasonable and probable grounds to believe that a child is in need of protection by reason of circumstances that are in his opinion unlikely to be of a temporary nature, he shall bring the matter before a judge for a hearing of the matter in accordance with section 21. 1973, c.38, s.18; 1974-75, c.16, s.4.	(4) Where an officer, on reasonable and probable grounds, believes that the child is in need of protection, but not in immediate jeopardy, and that no agreement pursuant to subsection (3) is likely to be reached, the officer shall, as soon as possible, apply to the court for a protection hearing.
(5) A restatement of Section 20(1) regarding the removal of the child is required with modifications due to the inclusion of a definition of immediate jeopardy in the Act.	20(1) An officer or peace officer who has reasonable and probable grounds to believe that a child is in need of protection and that the health or welfare of the child is in immediate jeopardy may without warrant take custody of the child and, where he considers it necessary to do so, remove him to a place of safety.	(5) Subject to subsection (6), where an officer or peace officer, on reasonable and probable grounds, believes that a child in in need of protection and is in immediate jeopardy, he shall apprehend the child, remove him to a place of safety and apply for a show cause hearing.
(6) A subsection is required to allow for the provision of emergency services in the home in lieu of removing the child. This provision would be similar in intent to section 17(1). A further provision is required to allow the director to appoint an individual to care for the child in the child's home. This section is similar to section 17(2).	S.17(1) Where an officer of the department or other persons authorized by the minister or his designated representative is attending at any place where a child appears to be in need of protection and the officer or person finds the child with no competent supervision present at the place, the officer or	(6) Where an officer, on reasonable and probable grounds, believes that a child is in need of protection and in immediate jeopardy, he may, in lieu of apprehending the child: (a) take any steps that he considers necessary to provide for the safety or welfare of the child;

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	person may in lieu of removing the child take such steps as he considers necessary to provide for the safety or welfare of the child.	(b) appoint a person to care for the child in the residence in which the child was found until the person having care of the child can be located or other satisfactory arrangements can be made for the care of the child; and (c) apply to the court for a protection hearing.
(7) A provision is required that outlines the rights of the person placed in the home to carry out certain functions. These would include entering the home, living in the home, housekeeping activities necessary to care for the child and the ability to exercise reasonable control over all children living in the home. These rights were not specified in the current legislation and would provide clearer direction to anyone serving in a homemaker capacity.	17(2) The officer or other person may employ such persons as he considers necessary to provide for the safety or welfare of the child until such time as the parent or person having care of the child is able to make adequate provision for the child. 1973, c.38, s.17.	(7) A person appointed pursuant to clause 6(b) may: (a) enter the residence; (b) live in the residence; (c) carry on normal housekeeping activities in the residence that are necessary for the care of the child; and (d) exercise reasonable control over all children residing in the residence.
(8) A restatement of Section 20(4) is required.	20(4) Where the officer is of the opinion that the health or welfare of a child taken into custody under subsection (1) would not be in immediate jeopardy if the child was placed with his parent pending the hearing of the matter, the officer may place the child with his parent until the hearing. 1973, c.38, s.20.	(8) Where an officer is of the opinion that a child apprehended pursuant to subsection (5) would not be in immediate jeopardy if the child were placed with his parent pending a protection hearing, an officer may place the child with his parent until the protection hearing.
(9) A restatement of Section 20(2) is required.	20(2) Where a peace officer takes custody of a child under subsection (1), the peace officer shall forthwith report the matter to an officer who shall whenever practicable assume custody of the child and thereafter be responsible for the child.	(9) Where a peace officer apprehends a child pursuant to subsection (5), he shall forthwith report the matter to an officer who shall thereafter be responsible for the care of the child.

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8.15 Right of Entry to Investigate **(1) A provision restating section 19(1) of the current Act is required to enable the officer to obtain a warrant if necessary.**	19(1) Where an officer of the department has been requested to investigate a complaint that a child is in need of protection and the parent or any other person refuses to give the officer access to the child, the officer may apply to a judge for a warrant authorizing the officer to enter and search, by force if necessary, and any premises or other place specified in the warrant in order to conduct an investigation to determine if the child is in need of protection.	15(1) Where an officer is investigating a report that a child may be in need of protection and the parent or person having care of the child refuses to give him access to the child, the officer may apply to a judge for a warrant authorizing him to enter and search, by force if necessary, any premises or other place specified in the warrant in order to conduct an investigation to determine if the child is in need of protection.
(2) A provision similar to section 19(2) is necessary to enable the officer to remove a child without a warrant if he believes the child is in immediate jeopardy.	19(2) Where in the opinion of an officer or peace officer the health or welfare of a child is in immediate jeopardy, the officer or peace officer may enter without warrant into any premises for the purposes of taking custody of the child and removing him to a place of safety. 1973, c.28, s.19.	(2) Where an officer or a peace officer, on reasonable and probable grounds, believes that the child is in immediate jeopardy, he may enter, without warrant, any premises for the purpose of making an investigation under section 14.
(3) A clause enabling the officer to obtain the assistance of a peace officer if the circumstances require should be included.	No current provision.	(3) An officer acting pursuant to this section or section 14 may call for the assistance of a peace officer.
8.16 Notice to the Parent **(1) Where a child in immediate jeopardy has been taken into custody of the Minister by an officer, there is an immediate need to advise the parent as to the reasons for such action, the identity of the officer and the purpose and timing of the show cause hearing. The parents have a right to this information and in a practical sense it can preserve opportunities for working toward agreement on the facts of the case and the nature of the resolution of the issues.**	No current provision.	16(1) Where an officer removes a child pursuant to subsection 14(5), he shall, as soon as possible: (a) notify the parents in writing or orally of the reasons for the apprehension of the child; (b) provide the parents with his office address and telephone number; and (c) notify the parent of the time, date and place of the show cause hearing.

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(2) Provision for motion to the child who may want to express his wishes to the court should be included. Twelve years of age is recommended to be consistent with the age of consent to adoption and the Young Offenders Act.	No current provision.	(2) Every child apprehended pursuant to subsection 14(5) who is more than 12 years of age shall be given notice of the time, date and place of the show cause hearing.
17 Agreements (1) Where a parent has acknowledged that the child is in need of protection, he may enter into an agreement for the care of his child with the Minister. Regulations are required to govern the nature and terms of such agreements.	No current provision.	17(1) An agreement pursuant to subsection 14(3), shall be in the form prescribed in the regulations.
(2) Because of the nature of the issues, the section should ensure that the parent is given the opportunity to review the agreement with a lawyer before signing it.	No current provision.	(2) Prior to signing an agreement, the parent shall be advised of his right to obtain independent legal counsel.
(3) A provision is required to stress the importance of not exerting undue influence on a care giver in order to get him to sign an agreement for protective family services. This type of provision is required in all agreements. It is doubly important in this section because these agreements are based on an admission by the parent that his child is in need of protection (an admission of guilt or responsibility).	No current provision.	(3) Any person who uses undue influence on another person in order to secure his signature to an agreement under this Part is guilty of an offence.
(4) All provisions in Part I respecting agreements shall apply to agreements under this part.	No current provision.	(4) The provisions of section 8 apply Mutatis mutandis to an agreement under this section.

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S.18 Protective Intervention Orders Provisions similar to those contained in section 38 of New Brunswick's Child and Family Services and Family Relations Act are recommended to cover those situations where the person who is a source of danger to the child's security or development should have no contact with the child. The ability of the person caring for the child to protect the child from further abuse would have to be considered in the making of an order as well.	No current provision.	**Protective Intervention Orders** 18(1) Upon the application of an officer, the court may make a protective intervention order directed to any person who, in the opinion of the court, is a source of danger to a child's security or development. (2) A protective intervention order made pursuant to subsection (1) may contain such provisions as the court consides appropriate including a direction to the person named in the order to refrain from any contact or association with the child. (3) A person to whom a protective intervention order is proposed to be directed shall receive seven days' notice of the application, and is entitled to be heard. (4) A protective intervention order shall be effective for a period not to exceed six months, but prior to, upon or after expiration of an order under subsection (1), an officer may apply for an additional period not to exceed six months. (5) Any person who violates the provisions of a protective intervention order commits an offence.
SHOW CAUSE HEARING **S.19 Show Cause Hearing Time Limitations** Provisions for a show cause hearing are included to allow for an early court review of the circumstances surrounding the apprehension and to resolve the issue of placement of the child pending a full hearing. This corresponds with the current requirement under S.21 wherein a hearing date must be set within 30 days of the apprehension. In practice, the hearing has occurred well beyond the 30 day period which results in the placement status of the child being unresolved for a considerable length of time. Addressing the apprehension	S.21 Where it appears to an officer that a child is in need of protection, or where a child has been taken into custody under section 20, the matter shall as soon as practicable after the child has been taken into custody, but not later than thirty days thereafter, be brought by an officer before a judge who shall fix a date, time and place for a hearing to determine whether the child is in need of protection. 1973, c.38, s.21; 1974-75, c.16, s.5.	**SHOW CAUSE HEARING** 19(1) Upon application of an officer pursuant to subsection 14(5), the court shall set a date for a show cause hearing which shall be within seven days of the apprehension. (2) Notwithstanding SS(1), the court may adjourn a show cause hearing from time to time but in no case shall a show cause hearing be held more than 14 days from the date of the apprehension.

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and interim placement issues within seven days should resolve many of these criticisms. s.20. Orders by the Judge The set of orders in s.20 allows the judge to rule on access so that the issue is dealt with as it relates to the child protection issues at hand. The parties can then operate on the basis of the order and turn their attention to preparation for the main hearing. The issue of access as part of The Family Services Act is dealt with on pages 48-56 of the discussion paper on the Review of the Family Services Act, Part I.	No current provisions.	20(1) Where, at a show cause hearing, the officer or peace officer satisfies the court that he believed on reasonable and probable grounds that the child was in immediate jeopardy at the time of the apprehension, the court shall, having regard only to the best interests of the child, order: (a) that the child be returned to his parent if the parent establishes that the child would not be in immediate jeopardy pending the protection hearing; (b) that the child be returned to the parent under the supervision of the minister which supervision may include the provision of family services; or (c) that the child remain in the care of the minister pending the protection hearing. (2) Where an order is made pursuant to clause (1)(c), the court may order access to the child by the parent on such terms and conditions as the court may determine. (3) Notwithstanding that an order is made pursuant to clause (1)(c), the minister may, prior to the protection hearing, permit the child to reside with his parent pending the protection hearing.

Rationale/Intent	Current Act	Proposed Wording
S.21 Mediation Skilled mediation by an independent third party is again critical to the thrust of a new Act which attempts to allow for working by agreement in lieu of the adversarial means offered by the court process. The officer and the parents should be enabled to agree to engage a mediator at various stages of their work together.	No current provisions.	21 Where the parent is present at a show cause hearing, the court shall advise him of the existence of mediation services and his right to be represented by counsel.
S.22 Fixing of Time of Hearings (1)&(2) The existing Section 21 should be substantially revised to include the show cause hearing and a statutory time frame to ensure timely court proceedings. A full discussion of this issue is to be found in Part One of the Review of The Family Services Act on page 29.	S.21 Where it appears to an officer that a child is in need of protection, or where a child has been taken into custody under section 20, the matter shall as soon as practicable after the child has been taken into custody, but not later than thirty days thereafter, be brought by an officer before a judge who shall fix a date, time and place for a hearing to determine whether the child is in need of protection. 1973, c.38, s.21; 1974-75, c.16, s.5.	22(1) At the conclusion of a show cause hearing, or on application pursuant to section 14, the court shall fix a date, time and place for a protection hearing. (2) Where a child is apprehended pursuant to subsection 14(5), the date set for the protection hearing shall be as soon as is practicable, but in any event no later than 45 days after the apprehension of the child.
(3) This subsection mandates the provision of notice of the child protection hearing. The number of days remains unchanged from the existing Act. The new provisions should recognize the fact that more persons than the parent may have a legitimate interest in the outcome of the proceedings. It is therefore recommended that a person of sufficient interest as determined by the court be included as well as the Chief of the Band of a child who is a Registered Indian. In addition it is recommended that the child if he is at least twelve years old or a child under 12 by order of the Court be included.	22(1) Subject to subsection (2), an officer of the department shall give five clear days' notice of the date, time and place fixed for the hearing to the parent of the child.	(3) An officer shall give seven days' notice of a protection hearing to: (a) the parents; (b) a person of sufficient interest as determined under Section 3; (c) the child if he is at least 12 years of age; (d) where ordered by the court the child under 12 in respect of whom the protection hearing is to be held, or his representative appointed pursuant to Section 37; (e) where the child in respect of whom the protection hearing is to be held is a Treaty Indian, the chief of the Band with which the child is registered;

Rationale/Intent	Current Act	Proposed Wording
(4) It is further recommended that the officer not be required to serve notice on those individuals entitled to notice if they were present at the show cause hearing when the date, time and place were fixed for the protection hearing.		(4) An officer shall not be required to service notice on any person entitled to notice under ss(3) if such a person was present at the show cause hearing when the date, time and place was fixed for a protection hearing.
(5) Existing provisions for waiving notice should be simplified to reflect the expansion of the notice provisions.	22(2) An officer: (a) may give less than five clear days' notice of the date, time an dplace fixed for the hearing to the parent where the parent agrees in writing to accept such lesser notice; (b) is not required to give any notice of the hearing to the parent of the child where the parent in writing waives the requirement of receiving notice of the hearing.	(5) A person referred to in subsection (3) may consent to service less than 7 days prior to the protection hearing or waive notice of the protection hearing.
(6) Although the process of disclosure would have begun within the context of notice to the show cause hearing (S.16), a section is required to ensure that in all cases, including those where the child has not been apprehended, the parties are advised as to the nature of the matter being brought to the court. A more detailed discussion of the formal notice requirements and disclosure can be found in the discussion paper entitled Review of The Family Services Act, Part I, pp.24-28.	22(1) Subject to subsection (2), an officer of the department shall give five clear days' notice of the date, time and place fixed for the hearing to the parent of the child.	(6) A notice referred to in subsection (3) shall contain: (a) the date, time and place of the protection hearing; (b) the provision of this Act pursuant to which the protection hearing is required; (c) the grounds as set out in section 12 on which it is alleged the child is in need of protection
S.23 Application may be Withdrawn (1) In keeping with the emphasis on resolving protection issues by agreement, provisions should be included to permit withdrawal of the application for a show cause hearing if the parents and the minister reach an agreement.	No current provision.	23(1) An application made under subsection 14(5) may be withdrawn prior to the show cause hearing where an agreement under subsection 14(3) has been reached between the parents and the minister.

Rationale/Intent	Current Act	Proposed Wording 20
(2) If the Minister places the child with parents pending court proceedings, provisions should be included to withdraw the application for show cause hearing and to apply directly for the protection hearing since the child is with the parents.	No current provision.	(2) Where the child has been placed with the parents under subsection 14(8), an application made under subsection 14(5) may be withdrawn prior to the show cause hearing, but the officer shall as soon as possible, apply to the court for a protection hearing.
S.24 Hearing by telephone Given the time lines governing the show cause hearing and the issue of distance in rural areas, particularly the north, an option for a show cause hearing by telephone at the discretion of the judge must exist.	No current provision.	24 A show cause hearing may be conducted by telephone in such manner as is allowed by the judge.
PROTECTION HEARING		**PROTECTION HEARING**
S.25(1)&(2) Disclosure Disclosure of relevant evidence to be presented is necessary to allow the parents to fully prepare for the hearing. However, it is also important to protect witnesses from potential coercion or even from potential harm. Therefore names should not be disclosed in advance of the hearing at which time they will give evidence.	No current provision.	25(1) Subject to subsection (2), the minister shall, on request, make full disclosure of evidence which he intends to produce at the protection hearing to each person referred to in subsection 22(3) or his counsel. (2) The minister shall not be required to disclose the names of witnesses prior to the protection hearing.
S.26 The Protection Hearing A new provision is required to deal with the nature of the hearing and specify that the first determination is whether the child is in need of protection.	No current provision.	26 At a protection hearing, the court shall determine whether the child is a child in need of protection.
S.27 Dismissal of the Application When a child is not determined by the court to be a child in need of protection, the application should be dismissed. Currently there exists no such provision.	No current provision.	27 Where the court determines that the child is not in need of protection, it shall dismiss the application and order the return of the child to a parent.

Rationale/Intent	Current Act	Proposed Wording
S.28 Orders **(1)&(2) New provisions for disposition by the court are required which would expand the ability of the court to make orders and attach conditions that it feels are in the child's best interest.** **The terminology that should be used is "custody" rather than "committal" except where permanent committal is being discussed. Custody gives the custodian only the right to make the day to day decisions about the care of the child during the term of the order.** **Where a child is committed, the minister assumes guardianship of the child and may place him for adoption. However, if the plan does not include adoption, but long term care is indicated with potential conditions on the order, the judge could select an order of long-term custody.**	29 Where on a hearing the judge finds that the child is in need of protection he may: (a) subject to such conditions as he considers advisable, order that the child remain with, or be returned to, his parent under departmental supervision for a period not to exceed one year; (b) order that the child be committed to the minister for such specified temporary period not exceeding one year as in the circumstances the judge considers necessary; or (c) order that the child be committed to the minister. 1973, c.38, s.29.	28(1) Where the court determines that a child is in need of protection, the court may, having regard only to the best interests of the child order: (a) on any terms and conditions the court considers appropriate that the child remain with, be returned to or be placed in, his parent's custody under the supervision of the minister for a period not exceeding one year; (b) the child be placed in the custody of a person of sufficient interest under the supervision of the minister for a period of time not exceeding one year. (c) the child remain in, or be placed in, the custody of the minister for a temporary period of time not to exceed six months; (d) the child be placed in the custody of the minister until the child's eighteenth birthday; or (e) the child be committed permanently to the minister. (2) In making an order pursuant to clauses (1)(a) to (c), the court may permit access on such terms and conditions as it may determine to any parent.
(3) A provision must be included that makes it clear that any change in custody or access provided under this Section cannot be done where it will interfere with an existing superior court order between the parties involved.	No current provisions.	(3) Where there is an existing order of Her Majesty's Court of Queen's Bench for Saskatchewan or the Unified Family Court, no order shall be made pursuant to clause 1(a) or subsection (2) that is inconsistent with that order.

Rationale/Intent	Current Act	Proposed Wording 22
(4) Children who are at least 12 years of age need to be involved in placement decisions. In the case of placement outside of a child's home other than in the custody of the minister, the child's wishes should be considered. He should not be placed with a relative or person of sufficient interest without this determination.	No current provisions.	(4) Notwithstanding subclause 2(2)(e), the court shall not make an order placing a child of the age of twelve years or more in the custody of a person of sufficient interest without taking into consideration the wishes of the child.
(5) A new provision is required to ensure that decisions are based upon the evidence before the court and that the order is based on the child's best interest. This gives the parties a clear statement of the court's reasoning in the event they wish to appeal or request judicial review.	No current provisions.	(5) The court shall give oral or written reasons for any order made pursuant to subsection (1) or (2).
8.29 Consent orders A provision is required to enable the court to make an order without hearing all the evidence where the parties are in agreement. This provision will allow the removal of the voluntary committal through court (section 13 in the existing Act) (See the initial sections of Part IV for further explanation.)	13(1) A parent, or an officer on the request of a parent, may apply to a judge for a hearing to have a child of the parent committed to the minister. (2) The judge may after hearing the parent and the officer commit the child to the minister. (3) Sections 22 to 31 apply, mutatis mutandis, to a hearing under this section. 1973, c.38, s.13.	29 Any party to a protection hearing may admit orally or in writing any matter in dispute.
8.30 Termination/extension of orders (1) When an order expires the child should be returned to the person having custody immediately prior to the order.	33(1) Upon the expiration of an order made under clause 29(b) the minister or an officer shall: (a) return the child to the care and custody of the parent or person having actual cusotdy of the child at the time of his removal; or (b) within 30 days after the expiration of the order apply to a judge for an inquiry to determine if the child is in need of further protection.	30(1) Subject to subsection (2), on the expiration of an order pursuant to clauses 28(1)(b) or (c), the child shall be returned to the parent in whose custody he was at the time of apprehension or prior to a protection hearing.

Rationale/Intent	Current Act	Proposed Wording 23
(2) If the Minister believes that there is a continuing protection situation he should be required to apply to the Court before the termination of the order, not as in the present Act, within 30 days after the expiration of the order. The intention is to bring the matter to the Court at the earliest possible date. This allows for early resolution of the issue and to better protect the rights of parents or other custodians. Since the Department has been attempting to work with the family during the life of the order, it should have no difficulty in gathering evidence on which to justify a continuing need for protection.	32(1) Prior to the expiration of an order made under clause 29(b), a judge may, upon application by the minister or the parent of the child, hold an inquiry to determine whether the child: (a) is not in need of protection and may be returned to his parent; or (b) is in need of further protection. (2) Where the judge finds that the child is in need of further protection he may commit the child for a further period under section 29. 1973, c.38, s.32.	(2) The minister may apply, prior to the expiration of an order made pursuant to clause 28(1)(b) or (c), for a hearing to determine whether the child continues to be in need of protection.
(3) If the Court concludes that a continuing need for protection exists, it must be able to extend the order or make a new order.	See S.33(1) above.	(3) After a hearing held pursuant to subsection (2), the court may make any order permitted pursuant to section 28.
(4) Temporary orders in favour of the Minister must be time limited. The Department believes that temporary orders should be limited to six months as outlined in S.28(11). A six month period allows for the development and implementation of a treatment plan which is consistent with the principle of the least restrictive or disruptive intervention in the life of the child and his family and with the best interests of the child. It is crucial that the plan and the time frame necessary to carry it out be developed in accordance with a child's sense of time given these concerns, it is further proposed that the maximum possible cumulative period a child may remain in the temporary custody of the Minister be set at 24 months.	No current provision.	(4) The total period of all orders made pursuant to subsection 28(1)(c) shall not exceed 24 months.

Rationale/Intent	Current Act	Proposed Wording
If changes have not been effected within the family by that time other alternatives should be explored by the court. Perhaps family reunification is not possible, and in that event the court could consider a custody order to age 18 or a permanent committal if adoption is a reasonable possibility. The court could also place the child with a person of sufficient interest. If the court considered it to be in the child's best interest, it could conclude that returning the child home under supervision would be an appropriate solution.		
S.31 Mediation - Skilled mediation by an independent third party is again critical to the thrust of a new Act which attempts to allow for working by agreement in lieu of the adversarial means offered by the court process. The Minister and the parents should be enabled to agree to engage a mediator at various stages of their work together.		31 Notwithstanding that a protection hearing is to be held, a parent and the minister may participate in mediation prior to the date set for the protection hearing for the purpose of concluding an agreement pursuant to section 14(3).
S.32 Variation of the Final Order (1) A party to a protection hearing should be able to make an application to the court to have the order varied or terminated based on the grounds of material change in circumstances. (2) Notice of an application for a hearing to vary the final order should be given to all parties to the protection hearing. Notice allows for full participation of all parties and for the broadest possible inquiry by the court as to whether a change in its order would be in the best interests of the child.	S.46 (1) The minister may, in respect of a child who was committed to him under Part I who is under eighteen years of age and who has not been placed in a home for the purpose of adoption, apply to a judge for an order to return the child to his parent. (2) Upon the hearing of the application the judge may, if he considers it to be in the interest of the child, make an order directing the minister to return the child to the parent and upon the making of such an order the committal of the child to the minister is terminated.	32(1) Except where a child who has been committed permanently to the minister has been placed for adoption, the court may, on application by any party to a protection hearing, vary or terminate an order made under section 28 where there has been a material change in circumstances. (2) All parties to the protection hearing shall be given notice of, and be entitled to be heard, at a hearing pursuant to subsection (1).

Rationale/Intent	Current Act	Proposed Wording 25
S.33 Information to assist the court When the court has determined the child is in need of protection, it must turn its attention to the selection of an appropriate disposition. The provisions should require the Minister to set out his plan for the care of the child so the court may weigh it against other proposals put forward by other parties. This also enables the parent to objectively review the plan and determine whether they are in agreement with it in whole or in part.	No current provision.	33 At a protection hearing, the minister shall present his plans for the care of the child.
S.34 Adjournment and Interim Orders (1) Because of the new issues being introduced in this legislation with respect to custody and access, new ordering provisions on adjournment are required. They relate to provisions outlined earlier dealing with judge's orders at a show cause hearing and they significantly expand the court's discretion with respect to care of the child pending a final disposition.	28 The judge may adjourn the hearing upon an application made ex parte or upon such notice as the judge considers advisable and, pending final disposition of the hearing, the child shall remain in the care and custody of the minister unless the judge orders otherwise. 1973, c.38, s.28.	34(1) Subject to section 35 and subsection (2), the court may adjourn a protection hearing from time to time and may make an interim order that the child: (a) remain with or be returned to his parent, either with or without supervision by the minister, which supervision may include the provision of family services; (b) remain within, or be placed in, the care of a person of sufficient interest either with or without supervision by the minister, which supervision may include the provision of family services; or (c) remain in or be placed in, the care of the minister.
(2) Adjournments are necessary for purposes of contacting witnesses, case preparation, attempts at reaching agreement, illness of parties or counsel etc. However, the best interests of the child demand an	23 The minister may, if he considers it to be in the public interest to do so, engage legal counsel to represent the officer and the parent of the child in preparation for and at the hearing. 1973, c.38, s.23.	(2) The court shall not adjourn a protection hearing for more than 30 days unless it: (a) gives written reasons for the adjournment; or (b) is satisfied that all parties consent to the adjournment.

Rationale/Intent	Current Act	Proposed Wording
expeditious hearing. Therefore the length of adjournments should be limited.		
S.35 Time-frame for conclusion of the hearing A new provision is required to ensure that matters do not continue without timely resolution. It is recommended that the hearing be concluded within 90 days unless the court does not have sufficient information to make an order. (A discussion on statutory time frames occurs on pp.29-35 of the Review of The Family Services Act, Part I).	No current provisions.	35 The court shall make an order under section 28 within 90 days of an application for a show cause hearing or where there is no show cause hearing, within 90 days of an application for a protection hearing, unless the court is of the opinion that it does not have sufficient information on which to make an order.
S.36 Documents filed with director Section 31 of the current Act should be restated.	31 Every judge's order and statement and all despositions taken down shall be filed in duplicate with the director. 1973, c.38, s.31.	36 Every order of the court shall be filed in duplicate with the director.
S.37 Legal Representation There are options for ensuring that all persons involved in proceedings under this Act are adequately represented. The option outlined here is included for discussion purposes. Other possible mechanisms for providing child representation in these hearings might include the use of court ordered reports, child interviews by the judge or an approved adult, or a court official or government official whose duty was to act as a "watch dog" for children's interests in these proceedings. A party to a proceeding generally has a right to counsel and as children are very involved in these proceedings, provisions must outline authority permitting the Minister to appoint counsel for a child. As well, the court in exceptional circumstances, should have the authority to order that a party, including a child, be represented by counsel.	23 The minister may, if he considers it to be in the public interest to do so, engage legal counsel to represent the officer and the parent of the child in preparation for and at the hearing. 1973, c.38, s.23.	37(1) Any party to a proceeding under this Part may be represented by counsel. (2) The minister may, if he considers it to be in the public interest, engage legal counsel to represent an officer, a parent, the child, or other person in preparation for, or at a show cause or protection hearing. (3) The court may, where it considers it to be in the interest of justice, order that a party receive legal representatin at any stage of the proceedings. (4) The court shall order legal counsel for a child: (a) where the petition alleges physical or emotional harm or sexual molestation or exploitation by or with the knowledge of a parent; or (b) where the parents are not present at court.

Rationale/Intent	Current Act	Proposed Wording 27
The current Act, Section 23, permitted the Minister to engage legal counsel for the parent and the officer. Because the proposal is to expand these provisions to include representation for all persons involved in proceedings it may have budget implications for the government.		
S.38 Liability A section that protects the officer, peace officer or Minister from any false arrest or imprisonment is necessary for a situation where they have apprehended somebody they believed was a child.	No current provision.	38 No action lies against the minister, an officer or peace officer respecting the apprehension of a person who is not a child where the officer or peace officer believed, on reasonable and probably grounds, that the person was a child at the time of the apprehension.
POWERS OF THE COURT		**POWERS OF THE COURT**
S.39 Court may order assessment (1) A provision is required to ensure that court has the latitude to request additional assessments of the child or a parent or a person of sufficient interest if it is not satisfied that it has full and complete information. (There will be cost implications here unless the services of government funded professionals are utilized.) (2) It is further recommended that this information be provided to each party in keeping with the principle of disclosure of relevant case information.		39(1) The court may, to assist it in determining what is in the best interests of a child, request that the child or a parent undergo medical, psychological, social, developmental or educational assessment performed by a qualified person. (2) A report prepared after an assessment pursuant to subsection (1) shall be filed with the court and each party shall be provided with a copy, unless otherwise ordered by the court.
S.40 Admission of evidence at previous hearing A restatement of Section 24 of the current Act is required.	24 The judge may at his discretion, upon such proof as he may require, admit as evidence any evidence taken at a previous hearing with respect to the child or with respect to a sibling of the child. 1973, c.38, s.24.	40 At a show cause or protection hearing, the court may hear and consider any evidence taken at a previous civil or criminal proceeding with respect to the child or a sibling of the child.

Rationale/Intent	Current Act	Proposed Wording
S.41 Admission of Evidence A provision similar to Section 25(2) of the current Act is required to enable the judge to order the child be brought before him.	25(2) When the judge thinks it is in the best interest of the child he may order the child to be brought before him. 1973, c.38, s.25; 1974-75, c.16, s.7.	41 The court may, when it considers it to be in the best interest of a child, order that a child be brought before the court.
S.42 Compelling the Attendence of Witnesses (1) No change. (2) New service provisions are required.	25(1) The judge may compel the attendance of witnesses in the same manner as a judge may compel the attendance of witnesses in summary conviction proceedings. No current provision.	42(1) The court may compel the attendance of witnesses in the same manner as it may compel the attendance of witnesses in summary conviction proceedings. (2) Notwithstanding The Summary Offences Procedure Act, a subpoena issued pursuant to subsection (1) may be served in the manner provided for in section 107.
S.43 Evidence of Witnesses Evidence must be taken under oath or affirmation. However, there may be circumstances where viva voce evidence cannot be arranged. The court must have authority to admit evidence by affidavit.	26(1) The evidence of every witness shall be taken under oath. (2) Notwithstanding subsection (1), where a child, who, in the opinion of the judge, does not understand the nature of an oath, the evidence of the child may be received though not given upon oath if in the opinion of the judge the child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. 1973, c.38, s.26. 27 The judge may at his discretion accept evidence by affidavit, and the judge shall accept as prima facie evidence a certificate purporting to be signed by the superintendent or warden or other head officer of a hospital, jail or other penal institution as to the detention and cause therefore of any person in the hospital or institution, and a certificate purporting to be signed by the officer in charge of the records of	43(1) Evidence of witnesses shall be taken on oath or affirmation. (2) The court may, in its discretion, admit evidence by affidavit.

Rationale/Intent	Current Act	Proposed Wording 29
	the appropriate department or agency of the Government of Canada as to the period or periods of absence from Canada of any present or former member or members of the Canadian Armed Forces. 1973, c.38, s.27.	
S.44 Publication of hearing report Hearings under the Act are open to the public. However there are situations where the safety, protection or dignity of the child, another party or of a witness need to take precedence over the need for a public hearing. The court should have discretion ot limit publication of all or part of a hearing. As well the Act should make it an offence to publish information identifying witnesses, parties or other people who are in attendance at or referred to in the proceedings to protect them from potential physical or emotional harm.	No current provision.	44(1) The court may make an order prohibiting the publication of a report of a hearing or a specified part of it. (2) No person shall publish or make public information that has the effect of identifying: (a) a child witness; (b) a party to a proceeding; (c) a member of a child's family; (d) foster parents; or (e) a person charged with an offence under this Part.
S.45, S.46 Appeal The authority of appeal court judges should be more limited than under the current Act. The court should not be able to reopen the case and hear new evidence, nor should it be able to call witnesses or make orders outside of the purview of this Act. If a matter is appealed, the party awarded custody at the hearing should continue having custody pending a decision of the appeal court or of the provincial court if the matter is returned to it for further deliberation.	36(1) Any person aggrieved by an order, determination or decision made by a judge under this Part may appeal to a judge of the Court of Queen's Bench in chambers and the judge appealed to may receive evidence upon questions of fact, such evidence to be either by oral examination by him, by affidavit or by deposition taken before an examiner or commissioner, or to direct and hold a hearing de novo before him and he may give any judgement and make any order that ought to have been made and may make such further or other order as the case may require or, by order directed to the judge of first instance, may require him to make nay order that the circumstances of the case require.	45(1) Any party may appeal an order made under this Part within 30 days of the date of the order, to a judge of the Court of Queen's Bench. (2) A judge sitting in appeal may: (a) confirm the order of the court; (b) substitute any order the court could have made under this Part; or (c) refer the matter to the court for re-hearing of all or part of the evidence with instructions. (3) Where the order appealed from involves the custody of a child, the party having custody under the order appealed from shall continue to have custody pending the final disposition of the appeal or of the determination of the court where the matter is returned to it pursuant to clause 2(c).

Rationale/Intent	Current Act	Proposed Wording
	36(4) The order or decision of a judge upon such appeal shall not be subject to further appeal except by leave of a judge of the Court of Queen's Bench or a judge of the Court of Appeal.	46 An order of a judge of the Court of Queen's Bench on appeal shall not be subject to further appeal except by leave of a judge of the Court of Appeal.
S.47 Copy of Order to Minister A procedural matter that is included in the current Act.	36(2) A certified copy of an order made by the judge appealed to shall be forthwith forwarded to the minister by the local registrar or chamber clerk by whom the order is issued.	47 A certified copy of an order made by the Court of Queen's Bench shall be forwarded to the minister by the local registrar who issues it.
S.48 Appeal Costs A procedural matter that is included in the current Act.	36(3) The scale of costs established in The Queen's Bench Rules applies to all proceedings on appeal and the costs shall be in the discretion of the judge appealed to.	48 The scale of costs established in the Queen's Bench Rules applies to all proceedings on appeal and the costs shall be in the discretion of the judge appealed to.
S.49 Appeal limit (1) The limitation period with respect to appeals should be inviolable where a child who was committed to the Minister is placed for adoption. This is necessary to ensure that adoption placements are stable and to guarantee certainty of placement both for the child and the adopting family.	36(5) Where: (a) An order is made committing a child to the minister; (b) the child is being maintained in the home of a person who is desirous of adopting the child; (c) the person mentioned in clause (b) has supplied the director with a petition complete in all material respects to adopt the child; and (d) a person seeks to appeal against the order of committal of the child after 30 days from the date on which the order of committal was made; no extention of time to appeal shall be granted to any person by any court. 1973, c.38, s.36; 1979-80, c.92, s.30; 1980-81, c.76,s.8.	49(1) Where an order is made committing a child permanently to the minister and the child is placed for adoption, no extension of time to appeal shall be granted to any person by any court.

Rationale/Intent	Current Act	Proposed Wording
(2) Where a child has been placed for adoption once the appeal period has expired, no one should be able to challenge the committal to the minister.	No current provision.	(2) Where there has been no appeal against the order of committal within the time allowed and an order of adoption has been made with respect to the child, the validity of the order of committal of the child shall not be challenged in any court.
(3) A clause similar to Section 38(1) is required recognizing committals made under previous child welfare legislation as final and conclusive.	38(1) Subject to this Act, where an order of committal of a child has heretofore been made under any Child Welfare Act or was made under The Family Services Act, 1973, chapter 38 of the Statutes of Saskatchewan, 1973, or under Part II of The Corrections Act, chapter 240 of The Revised Statutes of Saskatchewan, 1953, as that Part was in force before June 1, 1959, or is made under this Act, and the child has been placed for adoption, the order is final and conclusive and while it remains in force no order, decision or judgement respecting the custody, guardianship or maintenance of, or the right of access to, the child shall be made or rendered under The Infants Act or any other Act or under any other law. (2) Subsection (1) does not apply where the petition for adoption is withdrawn or has otherwise ceased to be in effect. 1973, c.38, s.38.	(3) Subject to this Act, where a committal has been made under this Act, The Family Services Act or any other Child Welfare Act and the child has been placed for adoption, the committal is final and conclusive and no application shall be allowed and no order, decision or judgement respecting the custody, guardianship or maintenance of, or the right of access to the child shall be made or rendered under this Act, The Infants Act or any other Act or other law until after an adoption order has issued or the child is no longer placed for adoption.

Part III - Child in Care

This part details the various rights and duties of the minister with respect to children in his care. It relates mainly to issues of guardianship and providing for the expense of sheltering, supporting, caring and any rehabilitative or counselling services.

Many concerns relating to the quality of care received by a child in the custody of the minister were expressed at the public hearings of the Minister's Advisory Council on Child Protection. These concerns cannot be directly addressed in legislation. This part of the Act, however, does provide for the establishment of regulations governing residential services provided to children in the care of the minister. In addition, many concerns regarding quality of care are more appropriately dealt with in the context of departmental policy.

Rationale/Intent	Current Act	Proposed Wording
2.50 Effects of Agreement for Care A new provision is required enabling the Minister to enter into an agreement with the parent or guardian of a child where there is clearly a protection situation present, rather than pursuing the matter through the Courts. These agreements rest on an admission by the parent or guardian that the child is in need of protection. It would be inappropriate for legal custody to remain with a parent or guardian who has admitted that he is unable or unwilling to exercise his parental responsibilities vis a vis the child. Therefore legal custody is given to the minister who then can limit his authority if he so chooses. Legal custody does not allow the Minister to place the child for adoption.	**43(1) Subject to subsection (2),** where a child has been committed to the minister under part I, the minister shall be the legal guardian of the child and of the estate of the child and the rights and the powers of the parent shall, during the period of the committal, be vested in the minister. (2) Where a child has been temporarily committed to the Minister under Part I, no action shall be taken by the minister with respect to adoption proceedings. (3) Where a child has been taken into custody under section 20, the minister may exercise, except with respect to adoption proceedings, all the rights of a legal guardian over the child until such time as the child is returned to his parent or the judge makes an order under **section 29, 1973, c.38, s.43.**	**50 Where a child is in the custody** of the minister by agreement pursuant to Part II the minister shall, during the life of the agreement, be the legal guardian over the child except with respect to adoption proceedings, subject to any provision in the agreement to the contrary.
2.51 Effects of admission into custody Section 43(3) clarifies that the Minister is the legal guardian of a child whom he has apprehended from his parents as being in immediate jeopardy. The present sections use the phrase "exercise... all of the rights of a legal guardian" which leaves it open to interpretation as to exactly what the minister's status is vis a vis the parents and how that status actually differs from a status of being the legal guardian of the child. Although the Minister is the legal guardian, he does not have the right to place the child for adoption.		**51 Where a child has been** apprehended under S.14(5) the minister shall be the legal guardian over the child until such time as the child is returned to his parents or the court makes an order under section 28 except with respect to adoption proceedings.

Rationale/Intent	Current Act	Proposed Wording 34
S.52 Effects of court ordered custody A section similar to S.43(1) continues to be required to clarify the legal position of the Minister with respect to children committed temporarily to his custody.	S.43(1) Subject to subsection (2), where a child has been committed to the minister under Part I, the minister shall be the legal guardian of the child and of the estate of the child and the rights and the powers of the parent shall, during the period of the committal, be vested in the minister.	52 Where the child is in the custody of the minister pursuant to an order under section 28(1)(c) or (d) he shall, be the legal guardian of the child except with respect to adoption proceedings.
S.53 Effects of committal It is only where a child is committed under Sec.28(1)(e) that the Minister can place the child for the purposes of adoption. A clear restatement of the current S.43(1) is required to reflect this intent.	See above subsection.	53 Where a child is committed permanently to the minister, the minister shall be the legal guardian of the child and of the estate of the child.
S.54 Extra-provincial orders and agreements - a section is required that extends the recognition of foreign orders to include temporary orders of custody and supervision orders. The present section merely extends recognition to permanent orders of custody. The new section should also recognize foreign agreements for care made pursuant to child welfare legislation. Sec. 37(2) can be eliminated as redundant and unnecessary.	37(1) Where, by an order made by a court of competent jurisdiction in any other province or territory of Canada or in any state or country, full parental rights and responsibilities in respect of a child have been absolutely and for all purposes legally vested in any person, organization, province, territory, state, country or legal representative thereof, other than a parent or the child, the order has the same force and effect in Saskatchewan as if it had been made under this Act. (2) Any statement, consent or declaration made by anyone in whom full parental rights and responsibilities have been vested as mentioned in subsection (1) has the same force and effect as it would have had if made by the parent of the child. 1973, c.38, s.37.	54 Any order under child welfare legislation made by a court of competent jurisdiction or an agreement for care made under child welfare legislation where certified by the original court or an appropriate authority in another jurisdiction as being valid and subsisting shall have the same force and effect in Saskatchewan as if it had been made pursuant to provisions in this Act as far as is consistent with this Act.

Rationale/Intent	Current Act	Proposed Wording
S.55 Support by minister - Section 44(1) and (2) must be reflected in any new legislation. The new provisions should expand the Minister's responsibility to include the provision of counselling and rehabilitative services. Subsection 44(3) is eliminated due to the revised age in the definition of "child". Services would be offered on the conditions that the child abide by the terms set for receipt of such services.	44(1) Where: (a) the minister has taken a child into his custody under section 8; (b) a child has been taken into custody under section 20; or (c) a child has been committed to the minister under section 11, 13, or 29; the minister shall be responsible for the expense of sheltering, supporting, educating caring for the child during the period of the custody or committal, as the case may be, and for that purpose may make any necessary expenditures in advance or otherwise. (2) Where the minister undertakes to provide services, care, assistance or supervision to a child under section 8 or 9, he may make any necessary expenditures in advance or otherwise for that purpose. (3) Notwithstanding clause (a) of section 45, the minister may, if the child is of the age of sixteen years or more and the minister deems it to be in the best interests of the child, discontinue sheltering, supporting and educating the child.	55(1) While the child is in the minister's care pursuant to subsection 14(5); subsection 28(1); or section 61; an agreement under Parts I or II; the minister shall, subject to any terms or conditions of an agreement, be responsible for the expense of sheltering, supporting, educating, caring and providing appropriate counselling or rehabilitative services for the child and for that purpose may make any necessary expenditures in advance or otherwise.
S.56 Extension of support by minister (1) The Act should continue to allow the Minister to extend support to a person who had been in his custody or committed to his care until their 18th birthday. The new provision should include the offering of family services and counselling.	44(4) Subject to subsection (5), the minister may continue to provide support, shelter and care to a person who was previously committed to his care and who has attained the age of eighteen years where the support, shelter and care of the minister is necessary to allow the person to continue his education.	56(1) Subject to subsection (2) the minister may continue to provide support, shelter, care, counselling and family services to any person who had been in his custody to the age of 18 years or permanently committed to the minister where that person is continuing his education.

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(2) The limit on extended services should remain at 21 years or completion of an education program as in the current subsection.	(5) The minister shall not provide support, shelter and care for a person under subsection (4) after the person has completed his education or has attained the age of twenty-one years whichever first occurs. 1973, s.38, s.44.	(2) Services pursuant to subsection (1) shall not be provided after the person has completed his education or has attained the age of 21 years, whichever occurs first.
S.57 Duration of committal Provisions covering the possible termination points of a committal are essentially unchanged from those of section 45 of the current Act. Section 47 of the current Act is removed. The rights it purports to give to the Minister are already his by virtue of the fact that he is the legal guardian. The requirements with respect to agreements are policy issues or at worst regulatory. It is not necessary that they be in legislation.	45 Except in the case of a temporary committal, a child committed to the minister under Part I shall be deemed to have been committed to the minister until: (a) the child attains the age of eighteen years; (b) the child marries; (c) the child is adopted; (d) the committal of the child is terminated under section 11 or 12; or (e) the committal of the child is terminated by an order of a judge under this Act; whichever first occurs. 1973, c.38, s.45. 47.(1) The minister may, if he considers it to be in the best interests of a child under the age of eighteen years who has been committed to him or placed in his custody under Part I: (a) enter into a written contract with the parent of the child permitting the child to live with the parent subject to the supervision of the director; or (b) place the child in a foster home or in an institution or other facility under a written agreement that provides for shelter, treatment, support and education of the child; but none of the rights or powers vested in the minister by this Part shall be thereby impaired.	57 A child who has been committed permanently to the minister shall be deemed to have been committed until: (a) his 18th birthday; (b) his adoption; (c) his marriage; (d) the committal of the child is terminated by an order of the court; (e) the committal is terminated under setion 32.

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	(2) A contract made under subsection (1) shall be deemed to contain a provision reserving to the minister the right to writhdraw the child from any person having custody of the child where in the opinion of the minister the welfare of the child so requires. (3) A contract under subsection (1) may be made and executed by the director on behalf of the minister. 1973, c.38, s.47.	
S.58 Authority to provide special care facilities - no change	48 The minister may maintain and operate such facilities as he deems advisable to provide for the necessary shelter, treatment, support and education of children committed to him or in his custody. 1973, c.38, s.48.	58 The minister may maintain and operate such facilities as he deems advisable to provide for the necessary shelter, treatment, support or education of children committed to him or in his custody.
S.59. Regulations - New provisions should incorporate the provisions of the current section 87 of the current Act as they pertain to provisions under this PART of the proposed Act with some modifications to accommodate all resources.	87(1) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and are not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by, this section has the force of law and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations, not inconsistent with any other provisions of this Act; (a) prescribing the form of any contract under section 47 and, subject to section 47, prescribing the terms and conditions pursuant to which a contract under that section may be entered into;	59 For the purpose of carrying out the provisions of this Part, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and are not inconsistent therewith.

Rationale/Intent	Current Act	Proposed Wording
	(e) in respect of foster homes or group homes or institutions that have as their primary aim or object the care, custody or treatment of children other than hospitals approved under any Hospital Standards Act and institutions that have as their primary aim or object the education of children; i) classifying, licensing, regulating and controlling institutions, foster homes or group homes; ii) prescribing the conditions under which any licence may be cancelled or suspended; iii) prescribing standards to be maintained by any class or classes of institutions, foster homes or group homes; iv) specifying the number of persons that may be admitted into any institution, foster home or group home or any class or classes of institutions, foster homes or group homes; v) requiring any institution, foster home or group home or any class or classes of institutions, foster homes or group homes, to submit to the minister returns, reports and information with respect to the operation and management of the institutions, foster homes or group homes; vi) governing the visitation and inspection of institutions, foster homes or group homes or any of them; vii) prescribing the terms and conditions according to which funding may be provided to institutions;	

Rationale/Intent	Current Act	Proposed Wording
	viii) prescribing the terms and conditions according to which subsidies may be provided to parents for the care of their children in an institution;	

Part IV - Adoption

This Part deals with the adoption of children. Adoption and some foster care issues were the subject of discussion in the departmental paper, "Review of The Family Services Act, Part Two, Adoption and Foster Care Proposals," November 1983. Although this document deals largely with policy, it can be used as a reference for this Part.

The guiding principal under Part IV must be the best interests of the child. This part updates and revises the content of Part III of the existing Act. Voluntary committal provisions have been included in the adoption section because the almost exclusive intent behind their use is to facilitate adoption placement.

The various types of adoption are dealt with separately for purposes of clarity and because of the variance between them in terms of issues and legal provisions. It is recommended that titles be included within the statute itself to highlight the various sections and thereby increase their accessibility.

Rationale/Intent	Current Act	Proposed Wording
s.60 Interpretation **(a) "child" -no change to the definition of "child".**	49. In this Part: (a) "child" means a person who is under the age of 18 years and who has never been married;	60 In this Part: (a) "child" means a person who is under the age of 18 years and who has never been married;
(b) "history of the case" - New definition of "history of the case" should be included to make the term explicit. This report will take on added significance in private adoptions.	(b) "judge" means a judge of Her Majesty's Court of Queen's Bench for Saskatchewan;	(b) "history of the case" means a report by a director to a judge hearing a petition for adoption which includes: i) particulars on the birth parent ii) particulars on the petitioner iii) the director's assessment of the parent releasing her child and her feelings about the decision to place the child for adoption and of the child's adjustment in the new home iv) the director's recommendation;
(c) "judge" - Alteration of the definition of "judge" to accommodate the voluntary committal mechanisms in this Part.		(c) "judge" means a judge of Her Majesty's Court of Queen's Bench for Saskatchewan;
(d) "local registrar" -no change to the definition of "local registrar".	(d) "local registrar" means a local registrar of the Court of Queen's Bench. 1973, c.38, s.49; 1979-80, c.92, s.30.	(d) "local registrar" means a local registrar of the Court of Queen's Bench;
(e) "parent" - In this part the definition of parent must be restricted to the natural parent or the parent by adoption.		(e) "parent" when used in reference to the child means: i) the father and mother of the child where both are living or the survivor if one of them is deceased; ii) the mother of the child where at the date of the birth of her child she was unmarried and did not subsequently legitimize the child through marriage; iii) the mother only, where a child is born to a married woman and it has been established that her husband is not the father of the child; iv) the legal guardian of the child;
(f) "relative" - A new definition of "relative" should be included to facilitate provisions for the de facto adoption and private adoption.		(f) "relative" when used in reference to a child means the child's sibling, grandparent, great-uncle, great-aunt, uncle or aunt, whether by blood, marriage or adoption.

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(g) "stepparent - New definition of "stepparent" should be to facilitate the provisions for adoption by a stepparent.		(g) "stepparent" means the person who is not the child's parent and is the spouse of the parent.
S.61-63 Voluntary Committal Provisions for voluntary committal of children to the minister have been moved to this Part for two reasons: (1) they are used almost exclusively for adoption purposes; (2) the flow of the Act suggests this location. These children are not in need of protection and do not fall within the family support focus of Part I. Aside from this new location, a major revision is required in that the voluntary committal by a judge (sections 13/14 in the existing Act) is removed as it no longer appears necessary. With the move toward greater use of agreement mechanisms and working outside the courtroom wherever possible, it was decided to build upon the success of the voluntary committal by agreement that has been demonstrated over the last 11 years. In certain cases a committal through a court hearing mechanism will still be specified in policy and this will now be possible through the provisions for consent orders in Part II (see proposed section 29) To further ensure the quality of voluntary committals by agreement, several alterations to the existing sections are required: (1) the document will be prescribed by regulation;	11(1) Subject to the approval of the minister and by such form of agreement or other instrument as the minister may prescribe, a parent may voluntarily commit his child to the minister. (2) Where a parent has committed his child to the minister under subsection (1), the parent may in writing request the minister to advise him whether the child has been placed in a home for the purpose of adoption and, upon receipt of the request, the minister shall provide such information to the parent. (3) Where the child has not been placed in a home for the purpose of adoption, the parent who, under subsection (1), committed the child to the minister may, within one year after the date of the committal, in a form prescribed by the minister notify the minister that he wishes to terminate the committal and have the child returned to him. (4) Upon receipt of a notice under subsection (3) the minister shall: (a) return the child to the parent who sent the notice and thereupon the committal terminates; or (b) where the minister is of the opinion that the child is in need of protection, bring the matter before a judge for a hearing in accordance with section 21.	61(1) Subject to the approval of the minister and by such form of agreement or other instrument as may be prescribed by regulation, a parent may voluntarily commit his child to the minister. (2) No committal pursuant to subsection 1 shall be made within five days of the birth of the child. (3) Where the child has not been placed for adoption, the parent who, under subsection (1), committed the child to the minister may, within one year after the date of the committal, in a form prescribed by the minister notify the minister that he wishes to terminate the committal and have the child returned to him. (4) Subject to the provisions of the agreement upon receipt of a notice under subsection (3) the minister shall return the child to the parent who sent the notice and thereupon the committal terminates.

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(2) no agreement can be entered until 5 days beyond the birth of the child to allow the mother a reasonable recovery period; (3) the parent is given an opportunity to obtain legal advice (Sec. 62) before entering the agreement. This replaces the current practice of review by a third party professional who explains to the parent their options and the nature of the committal. Inclusion of an opportunity for legal review strengthens the committal and is also consistent with such provisions in Parts I and II. (4) the Minister should be restrained from placement of the child for adoption unless the parent waives the 30 day reconsideration period. Under existing legislation, a child may be placed for adoption prior to expiration of the reconsideration period, but will be removed from the placement if the parent withdraws the committal. A new section (63) will clarify the circumstances in which a child may be placed immediately for adoption. Complications could arise in situations where there are two parents voluntarily committing their child. In those committals where one parent has custody at common law, the agreement will have to address how matters would proceed if the other parent requested the child be returned. If the custodial parent were to request the child's return, the child would be returned to that	(5) Where the judge finds that the child is not in need of protection, the committal terminates and the minister shall forthwith return the child to the parent. (7) The voluntary committal of a child by an agreement or other instrument under subsection (1) by a parent who is under the age of eighteen years is as valid and binding as if the parent had attained the full age of eighteen years.	(5)(a) Notwithstanding subsection (4), where a child is admitted by the parents jointly, the child shall not be returned unless the request to terminate is made jointly. (b) Where a request has not been made jointly, the minister shall retain custody of the child and shall not place the child for the purpose of adoption pending an order under the Infants Act. (c) Where neither parent has applied for a hearing under the Infants Act within 3 months of the date of the refusal by the minister to return the child, the minister may place the child for the purposes of adoption. (6) The voluntary committal of a child by an agreement or other instrument under subsection (1) by a parent who is under the age of eighteen years is as valid and binding as if the parent had attained the full age of eighteen years.

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parent. The agreement would have to state that where the non-custodial parent requested the child's return, the committal would remain in force until there was a custody order in favor of that parent. Where custody is shared, another problem arises which would also have to be addressed by the provisions within the agreement. The agreement would have to state that in the event of a request to return the child who has not been placed for adoption where the parents are competing with one another, they would have to address that issue through an application for custody under the Infants Act while the minister retained custody of the child pending the decision of the court.	(9) Subject to subsection (3), where a child is committed to the minister under this section the committal has the same force and effect as an order of committal made by a judge under clause (c) of section 29. 1973, c.38, s.11; 1974-75, c.16, s.2. 12.(1) Where a child has been committed to the minister under section 11, the parent may, within thirty days after the date of the committal of the child, by written notice to the director request that the minister return the child to him. (2) Upon receipt by the director of a request under subsection (1) the committal of the child terminates and the minister shall return the child to the parent. 1973, c.38, s.12. 13.(1) A parent, or an officer on the request of a parent, may apply to a judge for a hearing to have a child of the parent committed to the minister. (2) The judge may after hearing the parent and the officer commit the child to the minister. (3) Sections 22 to 31 apply, mutatis mutandis, to a hearing under this section. 1973., c.38, s.13.	(7) Subject to subsection (3), where a child is committed to the minister under this section, the committal has the same force and effect as an order of committal made by a judge under clause (1)(e) of section 28. 62. The parent shall be given an opportunity to obtain independent legal advice before signing the agreement for committal of the child. 63. The minister shall not place the child for adoption until 30 days after the date of committal of the child unless the parent waives the right to a period of time within which to consider making a request to terminate the committal.

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	14.(1) Where a child has been committed to the minister under section 13, the parent may, within thirty days after the date of committal of the child, by written notice to the director request that the minister return the child to him. (2) Upon receipt of a request under subsection (1), the minister shall forthwith bring the matter before a judge for a hearing in accordance with section 21 to determine whether the child is in need of protection. (3) Where the judge finds that the child is not in need of protection the judge shall by order terminate the committal of the child and thereupon the minister shall return the child to the parent. (4) Sections 22 to 31 apply, mutatis mutandis, to a hearing under subsection (2). 1973, c.38, s.14; 1974-75, c.16, s.3.	
S.64 Application for an Order of Adoption **(1) The existing provision discriminates on the basis of marital status which is in contravention of the Charter of Rights and Freedoms. The intent of the subsection can be handled through revised wording and through separate provisions for the various types of adoption later in this Part.** **(2) Because adoption legislation is not uniform across Canada, it was agreed by the provinces that, as legislation is amended, provisions would be added to allow for petitions to be heard when adoptive families move. These provisions will empower the court in Saskatchewan to**	51.(1) Any of the following persons who reside in or are domiciled in Saskatchewan may, upon such terms and conditions as the Lieutenant Governor in Council may prescribe, petition a judge to adopt a child: (a) a married person and his spouse who apply jointly; (b) a widow, widower or an unmarried person; (c) any other person to whom the minister has given authority to make an application on the grounds of exceptional or special circumstances.	**64(1) Application** Except as provided in subsection (2), any adult person who resides in Saskatchewan may, upon such terms and conditions as the Lieutenant Governor in Council may prescribe, apply to a judge to adopt a child: (2) Notwithstanding Section 64(1) where a child has been placed with a person for adoption by the director: (a) in Saskatchewan and the person moves from Saskatchewan prior to applying to the court for an order of adoption, the person may apply to a judge in Saskatchewan for an order of

Rationale/Intent	Current Act	Proposed Wording
hear a petition if a Saskatchewan child has been placed in another jurisdiction or if the adoptive parents move to another jurisdiction prior to the adoption having been finalized. **(3) New provisions are necessary to allow Saskatchewan to recognize orders made in other jurisdictions.**	(2) Notwithstanding clause (1)(a), a man who marries the mother of a child or a woman who marries the father of a child may petition to a judge to adopt the child. 1973, c.38, s.51.	adoption and the judge may grant such an order; (b) outside Saskatchewan, the person may apply to a judge in Saskatchewan for an order of adoption and the judge may grant such an order. (3) An adoption effected according to the law of any other jurisdiction has the same effect in Saskatchewan as an adoption under this Act.
S.65 Documents required - Provisions outlining the documents required do not require change.	55.(1) The application to a judge for an order of adoption of a child shall be by petition and the petition shall be in such form and accompanied by such documents as the Lieutenant Governor in Council may prescribe. (2) The petition for an order of adoption of a child shall be heard by the judge in his chambers. 1973, c.38, s.55.	65(1) The application to a judge for an order of adoption of a child shall be in such form as prescribed by the Rules of the Court and shall be accompanied by such documents as prescribed by the minister. (2) The application for an order of adoption of a child shall be heard by the judge in chambers.
S.66 Consents required - This provision needs revision to make it conform with the definition of "parent" and to make it easier to read and understand. **The existing subsection (4) clause (b) is removed and is replaced by a definition of "placed for adoption" in the general interpretation section.**	52.(1) No order of adoption of a child shall be made without the consent to adoption in writing of: (a) each parent of the child if both are living or the survivor if one of them is deceased, in respect of a child who has not been committed to the minister, or (b) each parent by adoption if the child has been previously adopted; or (c) the mother only, whether or not she is of the age of eighteen years, where at the date of the birth of her child she was unmarried and did not subsequently legitimize the child; or	**Consents required** 66(1) No order of adoption of a child shall be made without the consent to adoption in writing of the parent. (2) Notwithstanding subsection (1), where the child is committed to the minister the consent of the minister only is required. (3) Notwithstanding subsection 1, a application for an order of adoption pursuant to Sec. 78 (De facto adoption) shall not require the consent of the parent. (4) Where the guardianship of the child is vested in a children's aid society, a member of an executive council of a government or other public official of such government or other child caring agency outside Saskatchewan, then the consent only

Rationale/Intent	Current Act	Proposed Wording
	(e) the guardian or person, if any, having the lawful custody of the child where the child has no parent mentioned in clause (a), (b), (c) or (d) who is alive or whose consent is necessary; and where the guardianship of the child is vested in a children's aid society, member of an executive government or other public official of such government or other child caring agency outside Saskatchewan, then with the consent only of the society, member, official or agency as the case may be; or (f) the minister only where the child has been committed to the minister under Part I. (2) No order of adoption shall be made without the written consent of the child to the adoption if the child has attained the age of twelve years. (3) A person whose consent is required by clause (e) to (f) of subsection (1) shall not thereby be debarred from being the petitioner. (4) A person whose consent is required by clause (a), (b), (c), (d) or (e) of subsection (1) may by written notice to the director withdraw his consent: (a) at any time within thirty days after the execution of the consent; or (b) subject to clause (a) and to section 11, at any time prior to the day on which the child is placed in a home by the director for the purpose of adoption and the person with whom the child is placed for the purpose of adoption has supplied the director with a petition complete in all material respects to adopt the child. 1973, c.38, s.52.	the society, agency or official is required. (5) No order of adoption shall be made without the written consent of the child to the adoption if the child has attained the age of 12 years. (6) A person whose consent is required by subsections (1) or (2) shall not thereby be debarred from being the applicant. (7) A person whose consent is required by subsection (1) may by written notice to the court withdraw his consent at any time within 30 days after the execution of the consent.

Rationale/Intent	Current Act	Proposed Wording
S.67 Dispensing with consent **Provisions in the existing Act should be retained, but in revised form to make the section consistent with the changed provisions in section 66.**	53 The consent of any of the persons mentioned in clauses (a), (b), (c), (d) and (e) of subsection (1) of section 52 are not required if the judge, having regard to all the circumstances of the case, is satisfied that it is in the best interests of the child to dispense with the consent. 1973, c.38, s.53.	67 The consent of any of the persons mentioned in Section 66 is not required if the judge, having regard to all the circumstances of the case, is satisfied that it is in the best interests of the child to dispense with the consent.
S.68 Adjournment **(1) Existing provisions are still required, but should be altered so a notice issued by the court covers the hearing date rather than the petition.**	54(1) Where a consent required by subsection (1) of section 52 has not been obtained and the judge does not dispense with that consent, he shall adjourn the matter for a period not exceeding sixty days and direct that the person whose consent is required be served with notice of the petition either by personal service or in such manner as the judge may direct.	68(1) Where a consent required by section 66 has not been obtained or dispensed with under S.67 the court shall adjourn the matter for a period not exceeding 60 days and direct that the person whose consent is required be served with notice of the hearing date of the petition for an order of adoption by personal service or in such other manner as the judge may direct.
(2) Slight revision to subsection (2) is suggested for readability.	(2) Where the person so served does not appear at the time appointed or within such further time as the judge may allow or, upon appearing does not show cause why the adoption order should not be made, the judge may dispense with his consent. 1973, c.38, s.54.	(2) Where the person served under subsection (1) does not appear at the time appointed or within such further time as the judge may allow, or upon appearing does not establish why the order of adoption should not be made, the judge may dispense with his consent.
S.69 The adoption of children committed to the minister **(1) The existing provisions require restatement in a straightforward manner. They will join with S.61(5) to give clear direction on when children may be placed for adoption.**	56.(1) Where a child is placed for adoption in the home of a person, the person may at any time, except as thereinafter provided, petition the judge for the adoption of the child if the time within which an appeal against the order of committal of the child has expired or where the child has been committed voluntarily to the minister and the voluntary committal has not been withdrawn pursuant to section 12.	**The adoption of children committed to the minister** 69(1) No child committed to the minister under Section 28.(1)(e) shall be placed for adoption until the appeal period has expired.

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(2) New provisions are required to limit the applicants' ability to proceed directly to adoption finalization. A period of time (minimum of 90 days suggested) is required for the new family to adjust and for the department to assist with that adjustment.	No provisions	(2) No person with whom a child committed to the Minister has been placed for adoption, shall apply to the judge for adoption within 90 days of the placement for adoption, except with the consent of the director.
(3) Provisions covering the maximum time a child may remain in placement require some revision to more clearly focus them on the adoption of a child committed to the minister.	56.(2) The petition for an order for the adoption of a child shall, unless the director provides otherwise, be made within one year after the child has been placed in the home of the petitioner for adoption.	(3) The application for an order for the adoption of a child who has been committed to the minister shall, unless the director provides otherwise, be made within one year after the child has been placed in the home of the person for adoption.
(4) Provision for the director to submit the petition on behalf of the petitioner should be altered to focus it on the adoption of a child committed to the minister. The existing subsection 56(4) is removed because of its redundance given other provisions.	(3) Where a child has been placed in the home of the petitioner for adoption the director may upon the request of the petitioner submit the petition to a judge on behalf of the applicant. (4) Where a child has been placed by the director in the home of a person for the purpose of adoption and the person does not make a petition for an order of adoption of the child, or request the director to submit such a petition on his behalf, within one year after the date of placement of the child for adoption in the home of the person, the person shall, unless the director provides otherwise because of entenuating circumstances, return the child to the director.	(4) Where a child who has been committed to the minister has been placed in the home of the applicant for adoption the director may upon the request of the petitioner submit the petition to a judge on behalf of the applicant.
(5) Provisions covering notice of intent to petition should be amended so that the words "to be submitted to a judge" are inserted early in the subsection to clarify that the petition is made by the applicant and not by the director.	57.(1) Except where a petition for an order of adoption of a child is made by the director on behalf of a person, the person shall give to the director thirty days' notice in writing of his intention to petition for an order of adoption of the child.	(5) Except where an application for an order of adoption of a child is to be submitted to a judge by the director on behalf of a person, the person shall give the director 30 days notice in writing of his intention to apply for an order of adoption of the child.

Rationale/Intent	Current Act	Proposed Wording
(6) Provisions requiring a history of the case are retained but are tailored to fit the ward adoption area and re-worded to remove the potential for misunderstanding of what is required of the director.	58 Except as otherwise provided in subsection (5) of section 56, where a petition for an order of adoption is made by a person to a judge, the director shall supply to the judge a history of the case and such other relevant information as the director sees fit or the judge may require. 1973, c.38, s.58.	(6) Where a person applies for the adoption of a child under this section, the director shall: (a) supply the judge with a history of the case; and (b) supply such other relevant information as the director sees fit or the judge may require.
(7) Adjournment provisions continue unchanged.	57(3) The judge may adjourn the hearing for such period and on such terms as he considers fit. 1973, c.38, s.57.	(7) The judge may adjourn the hearing for such period and on such terms as he considers fit.
S.70 Adoption assistance A provision similar to S.50 of the current Act is required to enable the Minister to provide financial assistance to an adopting parent if particular circumstances surrounding the adoption are of concern. These circumstances, which would be defined by regulation, would include children with mental or physical disabilities, family groups or the financial position of the adopting parents. This issue was specifically raised by foster parents at the Advisory Council hearings as the existing section allows for subsidized adoption only with respect to children with special needs and then only if financially independent applicants are unavailable. The proposed section would allow for the subsidized adoption of any child where, in the opinion of the Minister, it is in the best interests of the child to be placed with parties who would not be able to adopt without financial assistance.	50(1) When reasonable efforts have been made to secure a suitable person to adopt a child who has been committed to the minister and a suitable person to adopt the child cannot be found because of the special needs of the child the minister may: (a) provide to any person who is desirous of adopting the child such financial assistance as may be necessary to meet the initial and continuing expense of rearing th child; or (b) facilitate the adoption of the child by providing financial assistance to any person desirous of adopting the child to help defray the initial and continuing expense of adopting more than one child simultaneously.	**70 Adoption Assistance** (1) The minister may provide financial assistance in accordance with regulations to any person who adopts a child committed to the minister, if in the opinion of the minister, it is in the child's best interests to be placed with that person and the special needs of the child or the special circumstances of the adoption would place an undue financial burden on the adopting parent.
	(2) The minister may, subject to the approval of the Lieutenant Governor in Council, make regulations to carry out the intent of this section. 1973, c.38, s.50.	(2) The minister may, subject to the approval of the Lieutenant Governor in Council, make regulations to carry out the intent of this section.

Rationale/Intent	Current Act	Proposed Wording 51
3.71 Private adoption - The provisions respecting private adoptions in the present Act are unclear. Anyone reading the provisions on adoption would have difficulty discerning that a parent can place a child directly with a family for the purposes of adoption without the Department of Social Services being an active participant. The proposed section must establish clearly that a parent can place a child for adoption independent of the Department. It must also reaffirm the existing provision that prohibits the arranging of adoption by any other parties.	No clear provisions	**71 Private Adoption** (1) A parent of a child may place the child with another adult person for adoption.
	57.(1) Except where a petition for an order of adoption of a child is made by the director on behalf of a person, the person shall give to the director thirty days' notice in writing of his intention to petition for an order of adoption of the child.	(2) A person intending to apply for the adoption of a child under this section shall give the director 60 days notice of his intent to file an application with the court.
When a child is placed for adoption directly by his parents, the court has little information on which to base its decision on finalizing the adoption. No home study is as yet available to assist the Court in determining whether the adoption placement is in the best interests of the child.	58. Except as otherwise provided in subsection (5) of section 56, where a petition for an order of adoption is made by a person to a judge, the director shall supply to the jduge a history of the case and such other relevant information as the director sees fit or the judge may require. 1973, c.38, s.58.	(3) Upon receipt of the notice of intention to apply for adoption, the director shall prepare a history of the case and such other information as he sees fit for the assistance of the court.
The present Act requires that the adoptive parents give the Director 30 days notice of their intention to petition for adoption and requires the Director to supply the Court with a social history of the case. There has been some confusion with respect to preparation of histories of the case for the Court. In some regions the Department has awaited a fiat from the Court ordering that a history of the case be provided. This has delayed proceedings unreasonably. As well the 30 day period has been considered to be too short a time in which to prepare an adequate history. For comparison purposes, custody investigations at the Saskatoon Unified Family Court takes 6-8 weeks to complete.	No provisions	(4)(a) The director shall file the history of the case and any accompanying materials with the court at any time but no later than 60 days from the receipt of notice of application for adoption. (b) The director shall, at the time of filing the history, cause copies of all documents filed to be provided to the parent of the child and to the applicants.
	57.(3) The judge may adjourn the hearing for such period and on such terms as he considers fit. 1973, c.38, s.57.	(5) The judge may adjourn the hearing for such period and on such terms as he considers fit, and may request that the director provide additional information or reports on the case.

Rationale/Intent	Current Act	Proposed Wording
Therefore provisions are required which clearly state that the Director must supply the Court with a history of the case rather than waiting for the Court to order it. As well the notice provided to the Director should be raised from 30 to 60 days. In line with the principle of full disclosure, where a report is completed by the Director he should make a copy available to the parents of the child and to the prospective adoptive parents.		
s.77 Offences (1)&(2) The existing offence provisions are required with some re-wording to ensure agencies/ organizations are covered as well as persons, and to include advertising for adoption placement as an offence.	71.(1) No person shall give or receive or agree to give or receive any payment or reward to other consideration, either directly or indirectly, to procure or assist in procuring a child for the purpose of adoption. (2) No agency or person, other than the parent of a child or the department, shall, without the written permission of the minister, undertake to place or arrange for the placement of a child for the purpose of adoption. 1973, c.38, s.71.	72(1) No person, agency or organization shall give or receive, or agree to give or receive, any payment reward or other consideration either directly or indirectly, to procure or assist in procuring a child for the purpose of adoption. (2) No person, agency or organization other than the director shall without the written permission of the minister, advertise to place or receive a child for the purpose of adoption.
(4) New provisions should allow for the reasonable assistance of other family members who may know of suitable potential parents, but ensure that the parent is the person making the arrangement for placement.	No provisions	(3) No agency, organization or person, other than the director or the parent of a child shall, without the written permission of the minister, place or arrange for the placement of a child for the purpose of adoption (4) Notwithstanding subsections (1) and (2), a parent may arrange for the placement of his child for the purposes of adoption directly with prospective adopting parents and may be assisted in so doing by an immediate relative.

Rationale/Intent	Current Act	Proposed Wording
(5) The provisions for penalties continue unchanged.	72. A person who contravenes section 71 is guilty of an offence and liable on summary conviction to a fine of not more than $5,000 or to imprisonment for a term not exceeding one year, or to both fine and imprisonment. 1973, c.38, s.72.	(5) A person who contravenes any provision of this section is guilty of an offense and liable on summary conviction to a fine of not more than $5000 or to imprisonment for a term not exceeding one year, or to both fine and imprisonment.
S.73 History of the case must be filed - New provisions are required because of the importance of the judge having full information before him in all private adoptions.	No provisions	73 The judge shall not hear the application for a private adoption filed pursuant to section 64(1) until a history of the case is filed by the director.
S.74 Notice of Hearing - The petitioner must notify the parent of the hearing so that the parent may file a formal objection to the adoption being finalized where he has changed his mind about having his child adopted.	No provisions	74(1) A party who files an application for a private adoption shall serve the parent of the child with a copy of the application at least 7 days prior to the hearing. (2) Where it is made to appear that service cannot be effected, the court on an ex parte application, may dispense with service or order substitutional service.
S.75. Objection by Parents - Where a parent who has consented in writing to the adoption subsequently changes his mind, he should be able to file a formal objection and the court should be able to nullify his consent if it is of the opinion that it is in the best interests of the child to do so.		75(1) Upon receipt of the notice of the hearing of the application for a private adoption a parent who objects to the order being granted shall file his objection with the court. (2) Where an objection is filed the judge may refuse to grant the order and may nullify the consent to adoption.
S.76 Placement with a relative In private adoption it is necessary and practical that there be flexibility in the requirements around the history of the case where placement is made with a relative.	No provisions	76 Notwithstanding the provisions of Sections 70 to 75, where the parent of a child places the child with a relative for the purpose of adoption, a judge may grant an order of adoption without a history of the case provided that:

Rationale/Intent	Current Act	Proposed Wording
		(a) the applicant shall give to the director 60 days notice in writing of his intention to apply for an order of adoption of the child during which time the director may file a history of the case; or (b) the director shall, if the judge so requests, supply the judge with a history of the case.
S.77 Defacto Adoption - Provisions are required to facilitate the program direction that de facto adoptions be more clearly highlighted as an option. This provision should allow for the formalization of custom adoption in the native community. Provisions are necessary which reflect existing practice and custom, whereby children are placed with relatives or friends on the understanding that they be raised as children of those families. This is especially true of the aboriginal community. Because these are in essence private adoptions of long standing duration, formal consent of the parent should not be a requirement. Notice would be given to the birth parent, who could then file an objection if he opposed formalization of the adoption. The Court would be guided by the priuciple of the best interests of the child in ruling on whether to make the order. If the placement is with a relative, preparation of a social history by the Director should not be mandatory. This would be consistent with the provisions in step parent adoptions.	No provisions	**De facto adoption** 77(1) A person who has in his care and custody, and has maintained and cared for a child as his own child for a period of at least three consecutive years may apply to a judge for an order of adoption. (2) The provisions respecting private adoption apply mutatis mutandis to adoption under this section except that consent of the parent or guardian of the child shall not be required in support of the application to adopt. (3) Where the application is made by a relative of the child a history of the case shall not be required unless ordered by the court.

Rationale/Intent	Current Act	Proposed Wording
S.78 Stepparent adoption **The complexities involved in this type of adoption are addressed in the second departmental discussion paper, "Review of The Family Services Act, Part Two, Adoption/Foster Care Issues and Proposals", November 1983, pp.83-90.**		
(1) Provisions in S.78 and later sections on orders of adoptions should be designed to address the concern that often, stepparent adoptions have been viewed more in terms of the best interests of the custodial parent instead of the child in question. Specifically, provisions for the attaching of conditions to orders in stepparent adoptions are an attempt to address the child's needs and interests more than the interests of the parent who will be enabled to apply for conditions. **S.78 should continue the existing provisions around notice, but place the court in a position of greater control of the process. The provisions must allow the director to raise his concerns as appropriate.**	57(1) Except where a petition for an order of adoption of a child is made by the director on behalf of a person, the person shall give to the director thirty days' notice in writing of his intention to petition for an order of adoption of the child.	**78 Stepparent adoption** **(1) An application by a stepparent shall not be heard by the judge unless a copy of the application is served on the director at least 30 days prior to the date of the hearing of the application, or within such other period as the court may allow.**
(2) Provisions covering the history of the case in stepparent adoption must be continued.	56(5) Where a person petitions for the adoption of a child pursuant to subsection (2) of section 51, the director shall, if the judge so requests, supply the judge with a history of the case. 1973, c.38, s.56.	**(2) Where a stepparent applies to adopt a child pursuant to subsection (1), the director shall, if the judge so requests:** **(a) supply the judge with a history of the case; and** **(b) supply such other relevant information as the director sees fit or the judge may allow.**
(3) Adjournment provisions should be included in this section as well.	57(3) The judge may adjourn the hearing for such period and on such terms as he considers fit. 1973, c.38, s.57.	**(3) The judge may adjourn the hearing for such period and on such terms as he considers fit.**

Rationale/Intent	Current Act	Proposed Wording
Adoption orders **S.79 Power of the judge to require attendance.** Provisions continue as before.	59 The judge may require the attendance of the petitioner and of any other person thought to have some relevant information in respect of the matter. 1973, c.38, s.59.	**79 Adoption orders** The judge may require the attendance of the applicant and of any other person thought to have relevant information in respect of the matter.
S.80 Adoption Orders (1) The paramount consideration in adoption must be the best interests of the child. Therefore the words "in the child's best interests" should be added to the present wording of the subsection.	60.(1) The judge, if satisfied that an order should be made, may make an order for the adoption of the child.	80(1) The Court, if satisfied that it is in the child's best interests may make an order for the adoption of the child.
(2) Similar provisions to Sec. 60(2) of the current Act FSA are required in order to clarify the effect of the adoption order. The general principal is that legal ties to the birth parent or prior adoptive parent must be severed and that adoption creates a legal parent-child relationship between the adoptive parent and the child that he adopts.	(2) Except as provided in clause (a) of subsection (3), the order shall: (a) divest the natural parent of the child, guardian or person in whose custody the child has been of all legal rights in respect of the child and free the person from all legal obligations and duties as to the maintenance of the child; (b) make the child for all purposes the child of the adopting parent as though the child were a child born to the adopting parent in lawful wedlock.	(2) The order shall: (a) divest the parent of the child, guardian or person in whose custody the child has been of all lega rights in respect of the child and frees that person from all legal obligations and duties with respect to the child; (b) make the child, for all purposes, the child of the adopting parent; (c) divest the child of all rights to succession with respect to his birth parents or prior adoptive parents.
(3) Special provisions are required with respect to stepparent adoptions in order to ensure that the legal relationship between the parent of the child who is the spouse of the petitioner and the child are not erased. Where there continues to be a relationship between the child and his "former" parent, provisions respecting succession rights and existing maintenance orders should be included to allow the Court to continue them. In step-parent adoptions the order should create a relationship between	(3) Where the adopting parent is an applicant mentioned in subsection (2) of section 51: (a) clause (a) of subsection (2) of this section does not apply with respect to the natural parent who is the spouse of the adopting parent; and (b) the order gives to the adopting parent and his spouse who is the natural parent of the child the same rights and obligations with respect to the custody, guardianship and maintenance of the child as if	(3) With respect to stepparent adoptions: (a) the provisions of clauses (a) and (c) of subsection (2) shall not apply to the parent who is the spouse of the applicant; (b) the child's right to succession with respect to his birth parent or prior adoptive parent may be continued; (c) the provisions of an existing maintenance order or maintenance agreement in favor of the child may be continued;

Rationale/Intent	Current Act	Proposed Wording
the petitioner and his spouse who is the parent of the child and the child as if they were the parents of the child.	both were the natural parents and the same powers, rights and duties as joint guardians under subsection (1) of section 22 of The Infants Act.	(d) the adoption order gives the adopting parent and his spouse who is the parent of the child, the same rights and obligations respecting the child as if both were his birth parents.
(4) There is no change from Section 60(4) of the current Family Services Act.	(4) Subject to the other provision of this Part, the judge may make an order of adoption in respect of a child who is committed to the minister notwithstanding that the petitioner has taken up residence outside Saskatchewan prior to the time of the making of the petition for the order.	(4) Subject to the other provisions of this PART, the court may make an order of adoption in respect of a child who is a ward of the Minister notwithstanding that the petitioner has taken up residence outside of Saskatchewan.
(5) There is no change from Section 60(6) of the current Family Services Act.	(6) In making the order, the judge shall not include in the order the words "born out of wedlock" or any other words expressing or inferring that the child was illegitimate. 1973, c.38, s.60.	(5) In making an order, the Court shall not include the words "born out of wedlock" or any other words expressing or inferring that the child was illegitimate.
S.81 Rights of succession to property (1) no change	61.(1) A person who has been adopted in accordance with this Part, and his issue, shall notwithstanding any law or statute to the contrary, have on and from the date of the order of adoption the same rights of succession of property from or through the adopting parent as though the person adopted had been born to such parent in lawful wedlock.	81(1) A person who has been adopted in accordance with this Part, and his issue, shall, notwithstanding any law or statute to the contrary, have on and from the date of the order of adoption the same rights of succession to property from or through the adopting parent as though the person adopted had been born to that person.
(2) No change	(2) If a person adopted dies intestate his property shall be distributed in the same manner as though born to his adopting parent in lawful wedlock and for the purpose of this subsection where a natural parent of the person adopted is the spouse of the adopting parent the natural parent shall be deemed to be an adopting parent. 1973, c.38, s.61.	(2) If an adopted person dies intestate his property shall be distributed in the same manner as though born to his adopting parent and for the purpose of this subsection where a natural parent of the adopted person is the spouse of adopting parent the natural parent shall be deemed to be an adopting parent.

Rationale/Intent	Current Act	Proposed Wording
(3) No change	66 A person who has been adopted in accordance with the laws of the jurisdiction, in or outside Canada, wherin the adoption took place, and his issue, shall upon proof of the adoption, be entitled to the same rights of succession to property as they would have had if the person adopted had been adopted in accordance with the laws of this province. 1973, c.38, s.66.	(3) A person who has been adopted in accordance with the laws of the jurisdiction, in or outside Canada, wherein the adoption took place, and his issue, shall upon proof of the adoption, be entitled to the same rights of succession to property as they would have had if the person adopted had been adopted in accordance with the laws of this province.
S.82 Name of adopted child (1) No change	62(1) Upon an order of adoption being made and unless the order provides for the adopted child to retain his surname, the adopted child shall assume the surname of the adopting parent.	82(1) Upon an order of adoption being made and unless the order provides for the adopted child to retain his surname, the adopted child shall assume the surname of the adopting parent as permitted by the provisions of the Vital Statistics Act.
(2) No change	62(2) The judge may, in an order of adoption, change the Christian or given name or names as the adopting parent desires, and thereafter the adopted child is entitled to and is to be known by the name or names given to him by the judge. 1973, c.38, s.62.	(2) The judge may, in an order of adoption, change the Christian or given name or names as the adopting parent desires, and thereafter the adopted child is entitled to and is to be known by the name or names given to him by the judge.
S.83 Death of one petitioner (1) No change	88 Where a petition for an adoption is made jointly by a husband and wife to a judge and either the husband or wife dies prior to an order of adoption being granted, the judge may in the order of adoption, name the surviving petitioner and the deceased spouse as the adopting parents of the child.	83 Where an application for an adoption is made jointly by a husband and wife to a judge and either the husband or wife dies prior to an order of adoption being granted, the judge may in the order of adoption, name the surviving applicant and the deceased spouse as the adopting parents of the child.

Rationale/Intent	Current Act	Proposed Wording
S.84 Interpretation: "child" No change	65 The word "child" or its equivalent in any document or instrument includes an adopted child unless the contrary plainly appears by the terms of the document or instrument. 1973, c.38, s.65.	84 The word "child" or its equivalent in any document or instrument includes an adopted child unless the contrary plainly appears by the terms of the document or instrument.
S.85 Effects of adoption on previous adoption Extensive revision is required to the current S.67 to allow for situations where there is a stepparent adoption of a child who had been previously adopted. Where a parent consenting to a stepparent adoption is an adoptive parent himself/herself, the adoption order should not erase this consenting parent's rights to the child. Therefore, a new subsection is required.	67 If the child has been previously adopted, all the legal consequences of the former order of adoption shall, upon a subsequent adoption, terminate except insofar as any interests in property may have vested in the adopted child. 1973, c.38, s.67.	85(1) If the child has been previously adopted, all the legal consequences of the former order of adoption shall, upon a subsequent adoption terminate except insofar as any interests in property may have vested in the adopted child. (2) Notwithstanding subsection (1) or similar provisions under any Child Welfare Act where the parent is the spouse of the new adopting parent the legal rights of the parent and his adopted child resulting from a former adoption are not terminated.
S.86 Appeal - The appeal provisions must be restated for readability. An amendment is necessary to the provision for notice of appeal. Allowing 30 days from the making of an order often does not give the director sufficient time to consider his position due to the fact that orders are not immediately filed with him. The amendment should extend the appeal time where the director shows he did not receive the order soon enough. [Subsection (4)] The powers of the appeal court should be similar to other courts sitting in appeal, rather than as stated in the current S.64(1).	64(1) The minister or the adopting parent may apeal to the Court of Appeal against an order of adoption or a refusal by the judge to make an order of adoption under this Part and the procedure on the appeal shall be the same as is or may be provided by the rules of the Court of Appeal in the case of an appeal from an order made in chambers in a civil action except that notice of the appeal shall be served within thirty days from the date of the order and the Court of Appeal has full discretion and power to receive further evidence upon questions of fact, such evidence to be either by oral examination before the court, by affidavit or by deposition taken before an examiner or commissioner, and notice of the appeal shall be served upon the director.	86(1) The minister or the adopting parent may appeal to the Court of Appeal against an order of adoption or a refusal by the judge to make an order of adoption. (2) The procedure on the appeal shall be the same as is or may be provided by the rules of the Court of Appeal in the case of an appeal from an order made in chambers in a civil action except that notice of the appeal shall be served within thirty days from the date of the order. (3) The appeal court may: i) uphold the finding or order of the lower court ii) reverse a finding or order and make a new order or finding iii) return the matter to the lower court with instructions.

Rationale/Intent	Current Act	Proposed Wording
	(2) The Court of Appeal may give any judgement and make any order that ought to have been made and may make sure further or other order as the case may require or, by order directed to the judge of the first instance, require him to make any order that the circumstances of the case require or rehear the application.	(4) Notwithstanding subsection (2), where the director did not receive a copy of the order within 15 days of the making of the order, the director may apply for leave to extend the time within which he may appeal.
	(3) Where there has been a substantial compliance with the requirements of this Act the Court of Appeal shall not set aside an order of adoption by reason only of a defect or irregularity in matters of procedures.	(5) Where there has been a substantial compliance with the requirements of this Act the Court of Appeal shall not set aside an order of adoption by reason only of a defect or irregularity in matters of procedures.
	(6) The order or decision of the court upon such appeal is not subject to further appeal without leave of the Court of Appeal. 1973, c.38, s.64; 1979-80, c.92, s.30; 1980-81, c.76, s.8.	(8) The order or decision of the court upon such appeal is not subject to further appeal without leave of the Court of Appeal. 1973, c.38, s.64; 1979-80, c.92, s.30; 1980-81, c.76, s.8.
5.87 Filing of the order - No change to existing provisions, but a new subsection (4) is required to allow the court to release copies of the order to the department at any time.	68.(1) Every order of adoption, together with all the material used on the petition, shall be filed in the office of the local registrar for the judicial centre at which the judge who made the order was acting and the local registrar shall forward the original order to the director for transmission and retention by the adopting parent, retain a certified copy of the order for the use of the court and forward a certified copy of the order to the director and to the Director of Vital Statistics who shall register the same in the manner provided in The Vital Statistics Act.	87(1) Every order of adoption, together with all the material used on the petition, shall be filed in the office of the local registrar for the judicial centre at which the judge who made the order was acting and the local registrar shall forthwith forward the original order to the director for transmission and retention by the adopting parent, retain a certified copy of the order for the use of the court and forward a certified copy of the order to the director and to the Director of Vital Statistics who shall register the same in the manner provided in The Vital Statistics Act.

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	(2) Where the child adopted was born outside the province the local registrar shall forward to the Director of Vital Statistics an additional certified copy of the order of adoption. (3) No search of any file in the office of a local registrar containing an order of adoption or material relating thereto shall be permitted unless under an order made, after reasonable notice to the minister, by a judge. 1973, c.38, s.68; 1979-80, c.92, s.30.	(2) Where the child adopted was born outside the province the local registrar shall forward to the Director of Vital Statistics an additional certified copy of the order of adoption. (3) No search of any file in the office of a local registrar containing an order of adoption or material relating thereto shall be permitted unless under an order made, after reasonable notice to the minister, by a judge. 1973, c.38, s.68; 1979-80, c.92, s.30. (4) Notwithstanding subsection (3), the local clerk of the court may issue a certified copy of an adoption order to the director at any time.
S.88 Adoption disclosure Although materials relating to adoption are confidential, provision will be made in proposed Sec. 104(4) for the release of information post adoption and for the purposes of reunion services, by regulation.	69 After an order of adoption has been made all material relating to the adoption and held by the department shall be filed in the department and, except with the written permission of the minister, no search thereof shall be permitted. 1973, c.38, s.69.	88 After an order of adoption has been made all material relating to the adoption and held by the department shall be filed in the department and, except as prescribed by section 104(4), no search thereof shall be permitted.
S.89 Application of this Act to previous adoptions No change	70 A child adopted in accordance with an Act in force prior to the coming into force of this Act, is deemed to have been adopted in accordance with this Part. 1973, c.38, s.70.	89 A child adopted in accordance with an Act in force prior to the coming into force of this Act, is deemed to have been adopted in accordance with this Part.

PART V - Young Offenders

The Young Offenders Act (Canada) and The Summary Offences Procedures Act for the most part govern the procedures and services required to deal with young offenders.

This PART therefore need only address issues which those statutes have not addressed and which are required in order to operationalize formal programs for young offenders.

Specifically, provisions are necessary which deal with

a) the authority of the Minister with respect to services

b) the appointment of and the authority of institutional directors

c) the authority of institutional personnel

d) the development of regulations respecting institutions and other young offender services and for the use of custody and temporary detention facilities for services to non-offenders.

Rationale/Intent	Current Act	Proposed Wording
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Interpretion **S.96(a) "provincial director" - It is necessary to have a definition of provincial director that is consistent with the Young Offenders Act for this Part.**	No current provision.	Interpretation 90 (a) "provincial director" means a person designated under Section 2(1) of the Young Offenders Act.
(b) "young person" - For purposes of clarity, persons who are dealt with under the Young Offenders Act or under the Summary Offences Procedures Act are both defined as young persons.	2 (i) "juvenile delinquent" means a juvenile delinquent as defined in the Juvenile Delinquents Act.	(b) "young person" means a young person as defined in the Young Offenders Act or a juvenile offender as defined in the Summary Offences Procedures Act.
(c) "young offender services" - A definition is required for services provided through the department for a young offender.	No current provisions.	(c) "young offender services" means services provided to or for young persons in conflict with the law.
S.91-93 Provision of *young offender* services **The Minister must have the authority to establish, operate and maintain departmental services to young offenders.**	40 The minister may provide for *such services as he considers* advisable for juvenile delinquents within the meaning of the Juvenile Delinquents Act.	91(1) Subject to this Act and the regulations, the minister may establish, operate and maintain young offender services. (2) In accordance with the regulations, the minister may provide young offender services or pay for young offender services.
The Minister must also have the authority to assist a parent by assuming the costs of any young offender service provided within the home or for purchasing a service to the child outside of his home. **Finally the Minister must have the authority to fund non-governmental organizations in the provision of services to young offenders. Any agreement entered into by the Minister with an N.G.O. must be in writing.**	7 The minister may make such payments as he considers necessary to or for the benefit of a parent, child or other person where special services or moneys are considered by the minister essential to enable the parent to care for the child.	92 The minister may, for any purpose related to young offender services, provide financial assistance for the establishment, operation and maintenance of young offender services, on any terms or conditions that are prescribed by the regulations, to any person, agency, organization, association, institution or other body within or outside Saskatchewan.

Rationale/Intent	Current Act	Proposed Wording
	5.(2)(b) Without limiting the generality of subsection (1), the minister may, subject to the approval of the L.G.C. where the minister considers it advisable: provide funds by way of loans, grants or otherwise to assist in the research, development and maintenance of new community services and in the expansion and improvement of existing services.	93 The minister may, for any purpose relating to the administration of this Act, enter into agreements with and make grants to, on any terms or conditions that he may prescribe, any person, agency, organization, association, institution or other body within or outside Saskatchewan and without restricting the generality of the foregoing, may provide financial assistance for the purpose of: (a) assisting in the co-ordination of existing young offender services and in the development of new young offender services; (b) assisting in the research, development and maintenance of new young offender services and the expansion and improvement of existing young offender services; (c) conducting research with a view to ascertaining more effective methods of providing young offender services.
S.94 Minister's authority to promote development The minister should be empowered to provide consultative services to community agencies and to do research on services to young offenders.	No current provision.	94 The minister may by written agreement with any person or agency: (a) provide consultative services to assist in the co-ordination of existing young offenders services and in the development of new young offenders services. (b) conduct research with a view to ascertaining more effective methods of providing young offenders services.

Rationale/Intent	Current Act	Proposed Wording 65
S.95 Access to Records Given the provisions of S.40(3)(1) of the Young Offenders Act, the Provincial Director should be empowered by provincial legislation to have access to records maintained by the youth court.	No current provision.	95 The provincial director is hereby authorized to have access to records as allowed for pursuant to S.40(3)(1) of the Young Offenders Act.
S.96 Chief executive officer A person who has executive authority must be appointed to head up each facility used to detain young offenders.		96 The provincial director shall appoint a chief executive officer in each detention and custody facility.
S.97 Authorized leave When a court remands a young person to a detention facility it is concerned only with whether the young person will be held safely and securely until his court appearance. How that is to be done is the responsibility of the institutional director. If he believes that the Court's concern can be accommodated within a leave program then he should have the discretion to make provision for such program in accordance with the Young Offenders Act.	No such provision. Directors currently use their discretion in these cases.	97 The chief executive officer of the detention facility where the young person is detained may allow the young person to be temporarily released in accordance with Section 35 of the Young Offenders Act.
S.98 Admission of non-offender There may be circumstances that warrant placing a non-offender in a secure detention program temporarily. eg. a young person who is acting out physically and can't be restrained and who may be in danger of hurting himself might require holding in a detention facility but because placing a non offender in a detention facility is a drastic step, the Director should be required to justify his actions in the same manner. There are a number of options for ensuring that there is adequate review and that young persons are adequately represented.	No provision. Currently both offender and non-offender populations served by the same programs.	98(1) The chief executive officer of a detention facility may admit a non-offending child to a facility as permitted by the Regulations. (2) Notwithstanding subsection (1) where a non offender is admitted to a detention facility, the director shall, within 24 hours or as soon as practicable, cause the young person to be brought before a Justice. (3) A director who has brought a child before a Justice pursuant to subsection (2) shall show cause why the detention of the child is necessary.

Rationale/Intent	Current Act	Proposed Wording
This section is structured so that the review would occur in a court of law as an example. This matter will be the subject of further discussion prior to the introduction of the legislation.		(4)(a) Where the justice is satisfied that detention is necessary he shall order that the child remain in detention for a period of time not to exceed 8 days. (b) Where the justice is not satisfied that detention is necessary he shall order that the child be discharged from detention. (5) A detention order under subsection 4(a) may be renewed by the justice for further 8 day periods, if he is satisfied that a continuing need for detention exists. (6)(a) When a child is brought before a justice pursuant to subsection 3, he shall advise the child and where appropriate his parents, of their right to be represented by legal counsel and may adjourn the hearing to allow them to engage counsel. (b) Where the justice considers it to be in the interests of justice he may order that the director or the Attorney General engage legal counsel on behalf of the child.
8.99 Authority of peace officer conferred The most efficient use of staff requires that as well as their typical duties, they be responsible for security while supervising residents within their program areas. The alternative is to hire staff specifically to act as guards. As well, during periods of crisis such as escape attempts, riots or intruders, the administration must have all staff available and with legal authority to maintain law and order within the facility.	No provision in the F.S.A.	99 Every chief executive officer, instructor and other employee of a detention facility has the power of a peace officer for the purposes of enforcing the terms of a custody order made under the Young Offenders Act or the Summary Offences Procedures Act as such order deals with the young person and shall be entitled while performing these duties to all protection to which peace officers are entitled under the Criminal Code.

Rationale/Intent	Current Act	Proposed Wording 67
S.100 Jurisdiction of facility Young persons who misbehave or run from work placements etc. must know that they are liable to be charged with an offence eg. escape lawful custody or with a breach of an institutional regulation which may have an impact upon the length of their sentences.	No provision in the F.S.A.	100 For the purposes of this Act, whenever the term custody or detention facility is used, it shall include any facility designated under sections 7 and 24(1) of the Young Offenders Act.
S.101 Allowance for residents A young person on remand is not in the custody of the Minister. He is merely held at the court's request. The Minister is not the child's guardian and therfore a provision is necessary to give him authority to provide allowances to those young offenders.	Sec. 44(1) F.S.A.	101 The minister may at his discretion provide an allowance for any young person resident in a detention facility who is not in his custody.
S.102 Rules of facility A provision is necessary to give the Minister authority to make regulations respecting custody and detention facilities.	Sec. 87(1)(e) F.S.A. Sec. 40 F.S.A. Sec. 48 F.S.A.	102 The minister may make rules and regulations for the management, internal economy and discipline of each custody and detention facility operated under the Act.

PART VI - General Provisions

This section is intended to incorporate any general administrative provisions of the Act. It will deal with such matters as the establishment of an administrative advisory board, confidentiality of information, delegation of Ministerial duties and powers, liability, offences and penalties, reciprocal arrangement between provinces regarding transfer of custody and guardianship and child abduction. During the review of the General Provisions of The Family Services Act, it was determined that several sections of this Act were either redundant or covered by other legislation such as the Department of Social Services Act. Specifically, Sections 74, 75, 76, 80, 81, 82, 83 and 84 have not been included in the Child and Family Services Act for these reasons.

Rationale/Intent	Current Act	Proposed Wording
S.103 Family Services Review Board Provision is made for the establishment of an advisory board or committee to provide advice to the Minister on administrative decisions of the department regarding services provided by the department. The organization, membership, duties and scope will be prescribed by regulation. At the request of the Minister the board should have the authority to review administrative decisions challenged by departmental clients and to advise him of its findings. It should also, at the Minister's request, have the authority to review and assess the validity of procedures, policies and objectives of the child and family services system and to advise the Minister of its views and recommendations.	No provisions in current Family Services Act. However S.9 of the Department of Social Services Act allows for the establishment of advisory boards or committees by the department.	103(1) The minister shall establish a Family Services Review Board of persons who are interested and knowledgeable in the programs or services administered or provided under this Act. (2)(a) The Family Services Review Board shall review administrative decisions which have been challenged by clients of the department and shall advise the minister in writing of its conclusion and the facts on which they were based. (b) At the request of the minister, the Family Services Review Board may review and assess the objectives, policies and or procedures of the department as they pertain to this Act and shall advise the minister in writing of its views and recommendations. (c) The minister shall not be bound by a finding or recommendation of the Board but may take it under consideration.
S.104 Confidentiality - The Department of Social Services Act currently provides for the confidentiality of all documents related to the personal history of any adult or child who comes into contact with the department and the conditions under which this material may be released. It is felt that these sections are too general to adequately state the department's position with respect to the confidentiality of information pertaining to child welfare matters particularly in view of the recommendations regarding duty to report and notice of hearing.	S.18 Department of Social Services Act 18.(1) In the public interest, no file, document or paper that is kept by any person or in any place and that deals with the personal history or record of a child or adult and that has come into existence through anything done under or pursuant to this Act or an Act administered by the department, and no information pertaining to the personal history or record of a child or adult, shall be made available to any person other than the minister, deputy minister or a person employed by the department without the written consent of the minister.	104(1) The minister and any person, employed or assisting in the broad of administration of this Act shall preserve secrecy with respect to the name and any other identifying information of a person that comes to his attention under this Act and any files, documents and papers dealing with the personal history or record of a child or adult that have come into existence through any thing done under this Act and shall not disclose or communicate that information to any other person except as otherwise provided in this section.

Rationale/Intent	Current Act	Proposed Wording
This section will detail who may obtain information from department personnel, under what circumstances and what situations will continue to require the written consent of the Minister. The permissive nature of this section will necessitate the development of clear policy guidelines for the use of the social worker. Since circumstances may vary with each case it is felt that these guidelines should not be established either in legislation or regulations.	(2) Neither the minister nor any person serving on a board or committee appointed by the Minister under this Act or any other Act administered by the department, nor any member of the staff of the department shall be; (a) compellable to give evidence in respect of: i) written or oral statements made to him ii) knowledge or information acquired by him in the performance of his duties (b) required to produce any written statement mentioned in subclause (a)(i) at a trial hearing or other proceeding.	(2) Subject to Section 88, the minister, any director or officer, may disclose or communicate any information referred to in subsection (1) to the following: (a) the guardian, parent or foster parent of the child to whom the information relates; (b) the person to whom the information relates if the person is 18 years of age or over. (c) a physician, certified psychologist or a social worker who is responsible for any care or treatment being provided to the child to whom the information relates or for any assessment in respect of that child. (d) a teacher as defined in the Education Act if the child to whom the information relates is his pupil. (e) the board of an approved hospital or health unit that is responsible for providing services to the child to whom the information relates. (f) any person employed or engaged by the minister. (g) any person assisting the minister in the administration of this Act. (h) any person employed in the administration of child protection legislation in another province. (i) legal counsel acting on behalf of a child or parent. (j) a member of a police force or an agent of the Attorney General. (k) any person with the consent in writing of the minister. (3) Notwithstanding subsection (2), the name of a person who reports to the minister pursuant to Section 13 shall not be disclosed or communicated to any person without the consent in writing of the person who reports or of the minister.

Rationale/Intent	Current Act	Proposed Wording
(4) Regulations are necessary to guide employees of the Department with respect to release of adoption information to adoptees and with parents and for reunion services.		(4) Not withstanding subsection (2) information with respect to persons who have been adopted shall be released in accordance with regulations prescribed by the Lieutenant Governor in Council.
S.105 Offences - The current Act has several sections which outline the nature of offences and their penalties. However no general section regarding contraventions of the Act exists that outlines an alternative to criminal proceedings. In addition, the amount of the fine or the length of imprisonment for default of payment ($200 or 30 days) is not really reflective of the seriousness of the offence. It is proposed to combine the current references to offences and penalties into a more general provision with a more serious penalty.	73.(1) No person shall: (a) induce or attempt to induce a child committed to the minister under Part I or removed to a place of safety under section 20 to leave the premises in which he has been lawfully placed; (b) detain or harbour any such child after demand has been made by an officer or a person acting on behalf of the department for delivery of the child. (2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding $200 or to imprisonment for a term not exceeding 30 days or to both fine and imprisonment. 1973, c.38, s.73.	105(1) Any person who: (a) induces or attempts to induce a child committed to the minister under Parts I through V or removed to a place of safety to leave the premises in which he has been lawfully placed; or (b) detains or harbours any such child after demand has been made by an officer or a person acting on behalf of the department for delivery of the child; or (c) contravenes any provision of this Act or the regulations; is guilty of an offence and liable to a fine of not more than $1000 and in default of payment to imprisonment for a term of not more than 6 months or to both fine and imprisonment.
(2) A specific search and seizure provision is necessary in order to remove a child in the Minister's custody who is being harboured.	No current provisions.	(2) Upon the oath of an officer or peace officer that there are reasonable grounds to suspect that a child who is in the minister's custody pursuant to section 28(1) is being detained or haboured in a dwelling house, a judge or justice of the peace may issue a warrant to search that place and seize anything that may be evidence of an offence under this section.
(3) It is felt that referring a professional to his governing body, which may take action against an errant member, and also prosecuting him under the Act could amount to double the penalty. Initiation of a prosecution	No current provisions.	(3) No prosecution against a person, who is a registered member of a professional body for failure to report any matter required to be reported by this Act or the Regulations shall be commenced without the consent of the Attorney General.

Rationale/Intent	Current Act	Proposed Wording
under the circumstances should be subject to the consideration on approval of the Attorney General before it proceeds. **S.106 General Notice provisions** A general notice provision regarding serving notices on individuals is required for proceedings under this Act. Part II sets out specific service requirements in child protection matters and Part IV deals with notice requirements in adoption.	22(4) If in any case it is made to appear that prompt service cannot be effected upon the parent or that the parent is evading service, or cannot be located, the judge may upon application to be made ex parte dispense with service of notice upon the parent or may provide for substitutional service of the notice or may fix a new time, date and place for a hearing.	106(1) Where notice is required to be given to any person under this Act, such notice shall be given orally to the person or served personally on the person or his representative by delivery of a copy of the notice or may be sent by registered mail to the person and the giving of such notice shall be proven by an affidavit of service of the person effecting service of the notice. (2) Where a doubt exists as to the person to whom a notice under this Act should be given, an officer may apply to the court for directions as to the person to whom notice should be given and a notice given in accordance with such direction is sufficient notice for the purposes of this Act. (3) Where the court upon ex parte application is satisfied that prompt personal service of a notice or a subpoena cannot be effected or that the whereabouts of a person to be served is unknown or a person to be served cannot be located or is evading service, the court may make an order for substitutional or other service, by letter, advertisement or otherwise as it considers reasonable and may direct the manner of proving that service has been made as ordered or may dispense with service.

Rationale/Intent	Current Act	Proposed Wording
S.107 General Provisions for Compelling Attendance General provisions for compelling attendance of witnesses at court proceedings under the Act are required. The court now relies on the Criminal Code for the provisions respecting service and warrants and it would be more satisfactory to deal with these matters in this Act.	25(1) The judge may compel the attendance of witnesses in the same manner as a judge may compel the attendance of witnesses in summary conviction proceedings. (2) When the judge thinks it is in the best interest of the child he may order the child to be brought before him. 1973, c.38, s.25; 1974-75, c.16, s.7.	107(1) In a proceeding before it under this Act, the court may, on the application of a party or on its own motion, compel the attendance of any person for the purpose of giving evidence and require the production of any document in the same manner as a judge may compel the attendance of witnesses in summary conviction proceedings. (2) A subpoena issued pursuant to subsection (1) may be served in the manner set out in section 455.5(2) of the Criminal Code of Canada or by any other person who is not a party to the proceeding personally upon the person to whom it is directed and such subpoena may be proven by an affidavit of service by the person effecting service of the subpoena. (3) Where a person is subpoenaed pursuant to subsection (1) and fails to comply with the terms of the subpoena and it is proven that the subpoena was served on the person, the court may issue a warrant to compel the attendance of the person in the same manner as a judge may issue a warrant in summary conviction proceedings. (4) Every subpeona issued pursuant to subsection (1) shall remain in force from the date of issue until the hearing on the matter on which it is issued and where, after service of a subpoena, the hearing is adjourned, the witness so served shall be required to attend the adjourned hearing.

Rationale/Intent	Current Act	Proposed Wording
S.108 Parent as Witness for Minister The parent, though in conflict with the Minister, may be required to be called by the Minister as part of his case. This provision allows the Minister to call the parent and, with leave of the court, to establish essential elements of the case, such as identity, without compromising the Minister's presentation of evidence..	No current provisions.	108 In proceedings under this Act, a parent shall be competent and compellable and, if called as a witness by the minister, may with leave of the judge be cross-examined by or on behalf of the minister and the minister shall not by reason only of calling the parent as such witness be bound by his testimony.
S.109 Appropriation Authority to expend money in the provision of certain services or implementation of programs.	78 Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose.	109 Sums required for the purposes of this Act may be paid out of monies appropriated by the Legislature for the purpose.
S.110 Liability Because of the particular responsibilities of employees enforcing this act, and the reliance of the general community upon these employees to see that this Act is properly and effectively enforced, protection should be afforded to these individuals if they are performing their duties in good faith. As well as employees, others who act a agents of the department such as foster parents should be protected from liability if they have acted in good faith in performing their duties.	85 No action lies against the minister or any officer or employee of the department for any act done or any proceedings taken in good faith or orders or decisions made or enforced under this Act.	110 No action lies against the minister or any officer, employee, or agent of the department for any act done or any proceeding taken in good faith or any orders or decisions made or enforced under this Act.
S.111 Delegation by the Minister This section enables employees of the department to act on behalf of the Minister in those areas where delegation of authority or responsibility is indicated.	86 The Minister may, with respect to any duties or powers imposed or conferred upon him by this Act or any regulations under this Act, authorize any officer who is a member of the department to perform any of those duties or to exercise any of those powers.	111(1) The minister may, with respect to any duties or powers imposed or conferred upon him by this Act or any regulations under this Act, authorize any officer who is a member of the department to perform any of those duties or to exercise any of those powers.

Rationale/Intent	Current Act	Proposed Wording
A provision is required which will allow the Minister to appoint persons who are not his employees as officers. Regulations are required to establish necessary qualifications for officers so appointed.		(2) The minister may appoint any qualified person as an officer under the Act. (3) The minister shall establish Regulations governing the qualifications of persons who may be appointed as officers under this Act.
S.112 Delegation by the Director A section is required that enables an employee of the department to Act on behalf of a Director.	No current provisions.	112. The director may, with respect to any duties or powers imposed or conferred upon him by this Act or any regulations under this Act, authorize any officer who is a member of the department to perform any of those duties or exercise any of those powers.
S.113 Delegation of child welfare authority and administration A provision is required which will enable the Minister to appoint people outside of his Department as officers under the Act. eg. staff of mobile crisis units in Regina, Saskatoon, and Prince Albert. Negotiations have been in progress in the recent past between the province, the federal government and the Indian community with respect to child welfare on reserves. The Minister requires the authority to delegate powers under the Act to Indian and aboriginal groups so that they may be able to provide child welfare services within their own cultural context to their own people. At the same time the Minister must retain residual power so as to ensure a reasonable standard of service to all residents of Saskatchewan.	No current provisions	113.(1) The minister may delegate the administration of all or part of the Act to any organization or agency including Indian or aboriginal organizations or agencies. (2) In delegating authority under subsection (2) the minister may impose terms and conditions and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time and may at any time amend a delegation to provide that the organization or agency is no longer designated for a particular function. (3) Where the minister believes that an organization or agency is not providing services in accordance with the Act or regulations or in accordance with any term or condition imposed he may: (a) revoke or suspend the delegation of authority and (b) operate and manage the organization or agency in place of its board of directors.

Rationale/Intent	Current Act	Proposed Wording 76
		(4) The minister shall establish regulations governing: (a) monitoring of services; (b) revocation or suspension of a delegation under this section; (c) revocation hearings; (d) establishment, duties and composition of the hearing panel; (e) occupation and operation of the premises of an organization; (f) any other area as determined by the Minister respecting the delegation of authority under this section.
S.114 Runaways/Abduction **Provisions are required to cover the exercise of the minister's authority where:** **(a) a child from this or another jurisdiction is found without his parent or guardian and is in need of assistance in this jurisdiction. The minister requires authority to take custody of the child and facilitate his return to the parent or guardian.** **(b)(i) a child is in care of a person not entitled to custody of the child and that person is arrested or charged due to an infraction of the child abduction provisions of the Criminal Code of Canada, the Minister may be required to assume custody of the child and facilitate the return of the child to its lawful custodian.** **(ii) a child is brought into this country and is in the custody of a person who is not entitled to custody of the child and does not have the consent of the custodial parent. Because of Saskatchewan's endorsement of the terms of the Hague Convention provision must be made to allow the Minister to take the child into his custody pending return to the custodial parent.**	No current provisions.	114. Where: (a) a child is found without his parent or guardian and is in need of assistance to return to his parent or guardian; or (b) a child is in the care of a person who does not have a right to custody of the child and does not have the consent of a person having such a right; the officer may take custody of the child, provide interim care to the child and arrange for the child's return to the custodial parent or guardian as soon as possible.

Rationale/Intent	Current Act	Proposed Wording
In the context of this provision, it may be necessary to include power for the police to take custody of a child pursuant to the child abduction provisions of the Hague Convention and then turn the child over to the departmental officer.		
S.115 Children Under 12 in Conflict With the Law Children under 12 cannot be prosecuted for offences under federal or provincial law. The police have little direction with respect to their role when a child under 12 is found committing an "offence". Provisions are required giving them the power to apprehend and either return the child home or place him in the custody of the Department. The Department requires authority to hold the child and provide interim care pending his return home.	No provision	115.(1) Where a child, actually or apparently under the age of 12, is found committing what would be an offence but for his age, he may be taken into custody by a peace officer and, (a) returned to his parent; or, (b) placed in the custody of an officer. (2) Where a child is placed in the custody of an officer pursuant to subsec. (1), the officer shall provide interim care for the child pending his determination as to whether a protection situation exists.
S.116 Regulations An appropriate regulation generating power will be required here that will cover all parts of the Act. This power will be drafted prior to the legislation going forward.	S.87 of Family Services Act.	116 The Lieutenant Governor in Council may make regulations.
S.117 Authority for reciprocal arrangements This section is intended to enable the minister to, by mutual agreement, transfer guardianship or custody of a child to his counterpart or the appropriate person in another jurisdiction when this course of action seems to be in the best interests of the child or in turn to accept transfer of the custody or guardianship of a child from another jurisdiction.	79 Subject to the approval of the Lieutenant Governor in Council, the minister may enter into arrangements with the appropriate authority in any jurisdiction in or outside Canada with respect to: (a) the transfer of the custody and guardianship rights of the minister in respect of a child or children committed to the minister. (b) the transfer to the minister by such authority of the custody or guardianship of any child lawfully in charge of the authority.	117 The minister may enter into arrangements with the appropriate authority in any jurisdiction in or outside Canada with respect to: (a) the transfer of the custody and guardianship rights of the minister in respect of a child or children committed to the minister. (b) the transfer to the minister by such authority of the custody or guardianship of any child unlawfully in charge of the authority.

Rationale/Intent	Current Act	Proposed Wording
S.118 Application of the Criminal Code A similar provision to Section 88 of the Family Services Act is required.	88. Except as otherwise provided in Parts I or II, proceedings under those Parts are governed, mutatis mutandis, by the provisions of the Criminal Code relating to summary convictions insofar as applicable. 1973, c.38, s.87.	88. Except as otherwise provided in Parts I to VI, proceedings under those Parts are governed, mutatis mutandis, by the provisions of the Criminal Code relating to summary convictions insofar as applicable.